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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION
RUSSELL SCOTT FARIA,)
Plaintiff,) Cause No. 4:16CV-01175-JAR
vs.)
SERGEANT RYAN J. MCCARRICK,)
et al.,)
Defendants.)

VIDEO DEPOSITION OF LEAH L. ASKEY
VOLUME ONE
Taken on behalf of the Plaintiff
Monday - October 23, 2017

Reported by Jane Rich, CCR #411
COURT REPORTING ASSOCIATES
P.O. BOX 440014
BRENTWOOD, MO 63144
(314) 961-6306 - 265-4602 (Cell)

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Defendants.)

VIDEO DEPOSITION OF LEAH L. ASKEY, taken on behalf of the Plaintiff, on the 23rd day of October, 2017, between the hours of eight o'clock in the forenoon and six o'clock in the evening of that day, in the conference room of the law offices of Barklage, Brett & Hamill, P.C., 211 North Third Street, St. Charles, Missouri, before Jane M. Rich, Missouri CCR license #411.

A P P E A R A N C E S

The Plaintiff was represented by Mr. W. Bevis Schock, Attorney at Law, 7777 Bonhomme, Suite 1300, Clayton, Missouri 63105. Also present: Mr. Nathan Swanson, co-counsel.

The Defendant, McCarrick, was represented by Mr. Jason Retter, with the law firm of King, Krehbiel & Hellmich, 2000 North Hanley, St. Louis, Missouri 63144.

The Defendant, Askey, was represented by Mr.

15

Page 3

1 Christopher L. Heigele, with the law firm of Coronado,
2 Katz, LLC, 14 West Third Street, Suite 200, Kansas City,
3 Missouri 64105. Also present: Ms. Leah Askey and Mr.
4 Neil Bruntrager, personal counsel for Ms. Askey.

5 The Defendant, Lincoln County, was represented
6 by Mr. Joel D. Brett, with the law firm of Barklage, Brett
7 & Hamill, P.C., 211 North Third Street, St. Charles,
8 Missouri 63301.

9 The Defendant, Merkel, was represented by Mr. J.
10 C. Pleban, with the law firm of Pleban, Petruska Law, LLC,
11 2010 S. Big Bend Blvd., St. Louis, Missouri 63117.

12 Also present: Mr. Mike Merkel.

Exhibit
2

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Page 4

1 o-0-o
2 LEAH L. ASKEY,
3 of lawful age, having been first duly sworn to testify to
4 the truth, the whole truth, and nothing but the truth,
5 deposes and says on behalf of the Plaintiff as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. SCHOCK:

8 Q Miss Askey, as you know, my name's Bevis
9 Schock.

10 A Yes.

11 Q Would you please state your name?

12 A My name is Leah Lenay Womack Askey.

13 MR. SCHOCK: And let's do our announcements.
14 I represent the plaintiff, Russell Faria.

15 MR. SWANSON: Nathan Swanson for plaintiff.

16 MR. RETTER: Jason Retter for defendants
17 McCarrick, Merkel and Harney.

18 MR. PLEBAN: J.C. Pleban for Merkel.

19 MR. MERKEL: Mike Merkel.

20 MR. BREIT: Joel Brett for Lincoln County.

21 MR. HEIGELE: Chris Heigele for defendant
22 Askey.

23 MR. SCHOCK: Miss Askey, I want to start by
24 stopping and waiting for the lawn mower to go by.
25 [Whereupon, there was a short pause].

1 (Pages 1 to 4)

1 Q (By Mr. Schock) Okay. Let's get going again.
 2 Kind of a false start there.
 3 Ma'am, I want to ask you a little bit about your
 4 training and your life. So you went to college at San
 5 Diego; right?
 6 A I did.
 7 Q And then you went to law school at St. Louis
 8 University?
 9 A Correct.
 10 Q And when did you get out of St. Louis
 11 University?
 12 A 2006.
 13 Q And tell me what -- when you were admitted to
 14 the bar?
 15 A October of 2006.
 16 Q And did you work in the legal field right
 17 away?
 18 A I did.
 19 Q Who did you work for?
 20 A Myself.
 21 Q So you started a solo practice?
 22 A I did.
 23 Q Where was that?
 24 A In Troy.
 25 Q And how long did you do that?

1 A Until I became the elected prosecutor.
 2 Q Tell me what kind of cases you handled as
 3 the -- in private practice.
 4 A A little bit of everything.
 5 Q Some criminal?
 6 A Yes.
 7 Q Domestic?
 8 A Yes.
 9 Q Personal injury?
 10 A Yes, I think so, yeah a couple of those.
 11 Q Did you try any cases to jury verdict in
 12 private practice?
 13 A One.
 14 Q What kind of case was that?
 15 A It was a civil case.
 16 Q Tell me a little bit about it, just very
 17 briefly.
 18 A It was a -- I represented a guy who had a
 19 Rainbow vacuum franchise and he was being sued by, for,
 20 I think there was like unfair debt collection issues,
 21 and he was being sued by the person who purchased the
 22 Rainbow vacuum, but didn't pay for it, and so I
 23 represented him.
 24 Q And that went to jury verdict?
 25 A Correct.

1 Q So when you became the elected prosecutor,
 2 that was your only jury trial; is that right?
 3 A That's correct.
 4 Q Now you started prosecutors in two thousand --
 5 A Eleven.
 6 Q And that was?
 7 A January 1st.
 8 Q January?
 9 A Uh-huh.
 10 Q And this murder happened very late in 2011
 11 right?
 12 A Correct.
 13 Q How many jury trials did you try during your
 14 first year?
 15 A I don't know.
 16 Q Did you try any?
 17 A Yes. I think my first trial was in January of
 18 2011.
 19 Q And is that a crime -- I assume they're all
 20 criminal cases?
 21 A Correct.
 22 Q Okay. And so you really can't tell me how
 23 many you have done?
 24 A I, I can't, no.
 25 Q Do you think you've done as many as one or two

1 a month?
 2 A No. Probably -- I mean, I would just be
 3 guessing, but I would average probably five or six a
 4 year, I would say.
 5 Q I understand. When you became the elected
 6 prosecutor, did you have any special training, either
 7 before you ran, during the campaign, after your
 8 election, before your swearing in and beginning office,
 9 in how a prosecutor is supposed to function in the
 10 Missouri justice system?
 11 A Can you rephrase that?
 12 Q Sure. So we got -- You decided to run at some
 13 point; right?
 14 A Correct.
 15 Q And you ran a campaign?
 16 A I did.
 17 Q And you won?
 18 A I did.
 19 Q Okay. And during the time up to that
 20 election, did you take any special training, go to any
 21 classes given by the Attorney General, or anybody else,
 22 about how one works as a prosecutor in the State of
 23 Missouri justice system?
 24 A No.
 25 Q How about after your election, but before you

1 assumed office?

2 A No.

3 Q How about after you assumed office until --
4 well, for the whole first year, 2011?

5 A Yes.

6 Q Okay. Tell me about that.

7 A My first training was on January 13th of 2011,
8 and it was an elected prosecutor's meeting and training
9 for newly elective, and I went to that in Jefferson
10 City.

11 And then thereafter, we always -- the
12 Prosecutor's Association, Missouri Association of
13 Prosecuting Attorneys, we have two conferences each year
14 that specialize in just prosecution, and that type of
15 training, case law updates, changes in the law, anything
16 like that.

17 Q Did -- Let's take that very first one on
18 January 13. So you're there with the other rookies;
19 right?

20 A All of the electives that could be there, but
21 there were some of us that were newly elected.

22 Q I understand. And how many days was that?

23 A I don't remember.

24 Q I mean, was it two or three days? I mean, was
25 it just a morning long, or give me a sense of it?

1 A Well, I know I stayed in a hotel at least a
2 couple of days, I think, but I don't remember how many
3 days, or how many hours it counted for.

4 Q Various seminars and speakers, that sort of
5 thing?

6 A Correct.

7 Q Would you say that there's any specific one or
8 two major take-aways from that? I am curious whether
9 there are any, and what they are.

10 A I don't remember specifically.

11 Q Would you say one of them is, you're supposed
12 to do justice?

13 A I don't remember specifically that we had a
14 specific class regarding that.

15 Q You've held the office of prosecuting attorney
16 now for six or seven years; right?

17 A Seven, yeah.

18 Q Almost seven?

19 A Yeah.

20 Q Do you believe that it is the prosecutor's
21 first duty to do justice?

22 A I believe that's one of our duties.

23 Q What are some of the other primary duties of
24 of a prosecutor?

25 MR. HEIGELE: As far as her opinion?

1 Q (By Mr. Schock) Based on your understanding
2 today of the job, based on your knowledge, your
3 experience, your life experience, your attorney
4 training, everything, the whole bit.

5 A I think part of the job is to serve my
6 community; part of my job is to be a good steward of the
7 tax dollar; part of my job is to see to it that justice
8 is served and that our witnesses are protected; part of
9 it is to provide safety, or ensure safety, and educate
10 about safety in our community where we live; part of it
11 is to serve as liaison between our law enforcement
12 agencies within the county that I work; part of it is to
13 work with my county commission to do the best job I can
14 to be a good steward of the tax dollar and to represent
15 the county in the best way that I know how.

16 I think there are just a lot of, a lot of things
17 that go into the job that I do.

18 Q Would you agree that one of the jobs is to
19 scrupulously follow the Missouri Rules of Court?

20 A Sure.

21 Q In all prosecutions; right?

22 A Sure.

23 Q How many attorneys work in your office, other
24 than you today?

25 A Currently, five.

1 A Well, I know I stayed in a hotel at least a
2 couple of days, I think, but I don't remember how many
3 days, or how many hours it counted for.

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5 thing?

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21 first duty to do justice?

22 A I believe that's one of our duties.

23 Q What are some of the other primary duties of
24 of a prosecutor?

25 MR. HEIGELE: As far as her opinion?

1 Q How many when you first started in 2011?

2 A I don't remember.

3 Q Okay. When you assumed office -- First of
4 all, were you in a contested election that first time?

5 A I was in -- I'm rethinking. I actually now
6 have four. We offered a job to another attorney, but he
7 isn't currently working there, so I have four attorneys
8 and then myself. Five total. Sorry.

9 Q And I appreciate your correcting yourself.
10 And any time today that you figured out that you've made
11 an answer and it needs to be corrected, just stop and
12 we'll correct it; okay?

13 A Perfect.

14 Q And if you forget something and then you
15 remember it after the deposition, or you want to correct
16 it later, let your attorney know and he'll let me know;
17 fair enough?

18 A Fair enough.

19 Q So let's go back to this election. Was it a
20 contested election in 2011?

21 A Yes.

22 Q Primary and general, or both?

23 A Just primary.

24 Q There's a contested primary, so there was no
25 Democrat that ran?

Page 13	Page 15
1 A We were both Democrats.	1 A Yes.
2 Q You were both Democrats. Sorry.	2 Q Is there a system you put in place for that?
3 And was the, was the person you ran against the	3 A Correct.
4 sitting prosecuting attorney?	4 Q Was that put in place pretty early after you
5 A He was.	5 became prosecutor?
6 Q So unseated someone who would had been in that	6 A It's been an evolving system depending on
7 office?	7 who's working there, and depending on our case load.
8 A Correct.	8 Q Okay. When you hired in 2011, if I heard you
9 Q And who was that person?	9 right, maybe there was just one new hire and then some
10 A G. John Richards.	10 retained; is that right?
11 Q And did Mr. Richards have some attorneys	11 A I believe so.
12 working for him in 2010 before you became the	12 Q What did you consider to be the qualifications
13 prosecutor?	13 for a person to serve as a prosecutor when you made that
14 A He did.	14 hire?
15 Q And what happened to those people, as far as	15 A Well, obviously, they had to have their law
16 retention into your administration?	16 license. The person that I hired had 25 years
17 A Some of them stayed and worked with me, and	17 experience, I think.
18 some of them chose not to.	18 Q As a lawyer, or as a prosecutor?
19 Q How many stayed?	19 A As a lawyer, as a prosecutor, as a judge, all
20 A Three.	20 of those things.
21 Q And how many were -- How many didn't stay?	21 Q And who was that?
22 A Two.	22 A George Gundy.
23 Q So that would have been, he had five?	23 Q Does he still work for you?
24 A I don't know that. I know of two that didn't	24 A No. He retired.
25 stay. I don't know if he had more than that.	25 Q When you hired those people, did you tell them

Page 14	Page 16
1 I gave them the opportunity to interview if they	1 that --
2 wanted the position, and the ones that interviewed, I	2 A Let me go back.
3 hired.	3 Q Okay.
4 Q And you hired some new people, too?	4 A He, he retired, but he does still do special
5 A Not right away. Actually, three attorneys	5 appointments on different types of cases that may be
6 stayed, I believe.	6 over, overly burdensome for the office to handle, so he
7 Q I'm not too worried about the exact number.	7 still does that on a contract basis with the county.
8 I'm just trying to get a feel for this office is all I'm	8 Q Would you agree with the statement then when
9 trying to do right now.	9 you made that hire, you expected that person to do
10 A Yeah. I think I hired one attorney, I brought	10 justice?
11 one attorney in.	11 A Sure.
12 Q And all the people who work as attorneys in	12 Q In other words, I want to draw a distinction
13 your office report to you; is that right?	13 between just getting convictions and doing justice.
14 A What do you mean report to me?	14 Do you agree that to do justice means that if
15 Q Well, you're their boss?	15 you're in a prosecution and you reach a personal
16 A I am. But what do you mean -- I don't	16 conclusion that the defendant is not guilty, that the
17 understand report to.	17 charge should be dismissed?
18 Q Well, by just report to, I mean that that	18 A I do.
19 person has to treat you as the boss, and you set policy	19 Q Do you believe that all your people should
20 in the office and run the office; right?	20 follow that?
21 A I am the boss in the office, but to say anyone	21 A I do.
22 comes in and reports to me on a daily basis would be	22 Q Let's go right to this murder. When did you
23 inaccurate.	23 first become aware that there had been a murder on Sumac
24 Q Are you responsible for assigning cases, for	24 Drive in Lincoln County?
25 example?	25 And let me just give you, the date might help.

Page 17

1 The murder happened on the evening of the 27th of
 2 December, 2011.

3 You agree with that date; right?

4 A Correct.

5 Q So tell me in reference to that time when you
 6 first learned there was something.

7 A When I first learned that there was a murder,
 8 or I first learned that there was a death?

9 Q Very good correction. Let's go with death.

10 A That evening of the 27th.

11 Q And how did you learn about that?

12 A I don't remember exactly who called me, but
 13 typically when there is a death, someone, either
 14 dispatch, or someone from law enforcement will call and
 15 let me know that they're headed to a scene because there
 16 is a death, and they'll keep me posted if something is
 17 amiss.

18 Q Okay. Now, when you talk about a death of
 19 some very old person, dies in the hospital, that's not
 20 what we're talking about; right?

21 A Correct.

22 Q So this is a death that is of any suspicious
 23 circumstances?

24 A I wouldn't say any suspicious circumstances,
 25 and that, again, has kind of evolved.

Page 18

1 Q Talking about 2011 right now.

2 A And I don't really remember in 2011 what the
 3 situation was with regard to when they would contact me.

4 I just remember I got a call that they were
 5 going out to a, to a residence that had been called in as
 6 a suicide, and they let me know if, in fact, it was.

7 So normally, if there's a suicide, or something
 8 like that, that's when I get a call. Not if someone, you
 9 know, dies in their sleep, or whatever.

10 Q Right. Of course. I understand.

11 They gave you the address?

12 A No.

13 Q They gave you the name?

14 A No.

15 Q Just told you they were on their way to a
 16 situation?

17 A Yeah. Basically, make sure your phone's on
 18 and don't be in a sound sleep, essentially, you know,
 19 giving me a heads-up, it's late in the evening, and just
 20 giving me a heads-up that --

21 Q So why do you think that you personally were
 22 called?

23 A Because I'm the prosecutor.

24 Q Was it your procedure in place that they would
 25 always call you?

Page 19

1 A I don't think I had a procedure in place with
 2 regard to that. I think they probably -- I would just
 3 be speculating.

4 Q Okay. That's fine. Did -- We've said "they."
 5 I think you said you don't remember who called?

6 A Correct.

7 Q Is it your presumption it might have been
 8 somebody from the sheriff's office, or dispatch in the
 9 sheriff's office; does that sound right?

10 A It would have been somebody that knew of the
 11 call, so I don't, I don't know if it was the sheriff, or
 12 the sheriff's office, you know, a deputy, or -- I don't
 13 know exactly who it was. Or it may have been dispatch
 14 for that matter.

15 [Whereupon, Mr. Neil Bruntrager entered the
 16 room].

17 Q What did you do in response to that phone
 18 call?

19 A Nothing.

20 Q So it was late at night probably?

21 A Yes.

22 Q Did you just go to bed?

23 A Yes.

24 Q Kept your phone in a position where you could
 25 be awakened?

Page 20

1 A Correct.

2 Q And what was your next contact regarding the
 3 situation?

4 A I don't remember specifically. That I, I
 5 don't remember specifically.

6 Q Do you think they called you that night?

7 A I don't believe so.

8 Q Now you're aware now that the Major Case Squad
 9 was called out that night; correct?

10 A Correct.

11 Q Did you know that evening that the Major Case
 12 Squad was going to be involved?

13 A No.

14 Q So you don't remember being called that night,
 15 so is it a fair bet that you got up the next morning and
 16 somehow had further involvement in this situation?

17 A Yeah. As I recall, if memory serves me
 18 correctly, I got a call that morning when I was getting
 19 ready.

20 Q To go to work?

21 A Uh-huh. Getting my kids ready, yeah, and
 22 said, you know, when will you be in, essentially.

23 Q To the office?

24 A Correct.

25 Q And you said pretty soon?

Page 21

Page 23

1 A As soon as I drop the kids off, right.
 2 Q And you went in?
 3 A Correct.
 4 Q Now what happened in connection, your
 5 involvement in this situation after you got to work that
 6 morning?
 7 A I don't remember specifics. I mean, I would
 8 have gone next-door to the sheriff's office where the
 9 Major Case Squad would have set up shop just to say I'm
 10 here, I'm around, I'm next-door.
 11 Q You just said you would have. Did you do
 12 that?
 13 A I'm sure I did at some point. I don't know if
 14 I did that as soon as I got there, if I went into my
 15 office first, I don't remember if there was a docket
 16 that day. I don't know.
 17 Q You had your regular duties?
 18 A Correct.
 19 Q So when you went into the Major Case Squad, do
 20 you remember who was there?
 21 A No.
 22 Q There was a guy named Schimweg who was head of
 23 the Major Case Squad for this murder; correct?
 24 A Correct.
 25 Q Do you think he was there? Do you know him?

Page 22

Page 24

1 A I know him.
 2 Q Was he there?
 3 A I don't remember if he was there when I got
 4 there, or not.
 5 Q How about, was McCarrick, Mr. McCarrick?
 6 A Again, I don't remember specifically who was
 7 in the room.
 8 Q Did you gain knowledge when you went over
 9 there about what was known at that point by law
 10 enforcement?
 11 Did you talk to them about the murder?
 12 A I don't remember specifically speaking to
 13 anyone specific.
 14 I know that -- Again, I would be, I would be
 15 speculating what typically would happen.
 16 I'm sure the sheriff was around, McCarrick was
 17 probably around, because I think he was the report writer,
 18 so he would have likely been there.
 19 I don't remember when Lieutenant Schimweg
 20 arrived, if he had arrived prior to me getting there, or
 21 after. I don't, I don't know those things.
 22 Q Okay. That's fine. Do -- Mr. McCarrick said
 23 that there were meetings each day of the Major Case
 24 Squad personnel, and I think he said that only the
 25 people who were available would come, but these meetings

1 would happen two or three times a day.
 2 Do you remember when he said that? Were you
 3 present for his deposition?
 4 A I was.
 5 Q And do you remember when he said that?
 6 A I do.
 7 Q Is that consistent with your memory?
 8 A The Major Case Squad commander would have
 9 briefings usually in the morning and in the afternoon
 10 for whomever had returned from whatever lead they were
 11 on.
 12 Q And did you attend any of those briefings?
 13 A I did.
 14 Q So it went on for the 28th, 29th, 30th, and
 15 31st, according to Mr. McCarrick; does that sound right
 16 for you?
 17 A That sounds correct.
 18 Q So roughly, two a day of these briefings;
 19 right?
 20 I'm not saying exactly, because he wasn't sure,
 21 but that range; does that sound right?
 22 A Yeah. I don't know if they had more, or less
 23 than that. I wasn't there all day. I didn't sit over
 24 there. So, if I was in the building, or if I knew that
 25 they were going to have a briefing at a specific time

Page 25

1 Do you remember learning on the 28th that those
 2 interviews had taken place?

3 A No.

4 Q Did you learn that day that Russ Faria was a
 5 suspect?

6 A No.

7 Q When do you think you learned that?

8 A I don't recall.

9 Q Now when you said you -- I think the question
 10 was, did you learn Russ Faria was a suspect on the first
 11 day, is it that you don't remember, or you're certain
 12 you didn't learn of that the first day?

13 A I don't remember what day I learned of it.

14 Q Do you remember whether, on that first day,
 15 you gave any directives to law enforcement about how to
 16 conduct the investigation?

17 A I never gave any directives to law
 18 enforcement.

19 Q Would you say that that applies to all four
 20 days of the Major Case Squad call-out?

21 A Yes.

22 Q So I don't have to ask anymore questions about
 23 that, you are a hundred -- I'm not trying to beat the
 24 horse here, but I just want to make absolute clear, is
 25 it your position that you gave no directives to anybody

Page 26

1 in law enforcement during the Major Case Squad call-out?
 2 A I did not direct any investigation, nor have I
 3 ever.

4 MR. HEIGELE: Excuse me, excuse me.

5 Q (By Mr. Schock) Slightly different question
 6 than that.

7 Did you give any directives, any, any
 8 statements, such as try this, or give that lead to anybody
 9 in law enforcement during those first four days?

10 A No.

11 Q Would you say that you were an observer during
 12 those briefings, as opposed to a participant?

13 MR. HEIGELE: To the extent it's vague, I
 14 object, but if you understand what he's saying.

15 A I don't really understand what you're --

16 Q (By Mr. Schock) Sure. Well, you said you
 17 went to some of these briefings, we don't have a number,
 18 we don't remember the exact number; fair enough?

19 A Fair enough.

20 Q But you went to some of them?

21 A Correct.

22 Q And they're having them roughly two a day;
 23 right?

24 A I don't know how many they were having, but I
 25 know that they would typically have at least in the

Page 27

1 morning and in the afternoon, evening, but I don't know
 2 if they had others during the daytime.

3 Q We've already covered that. I don't mean to
 4 be going over the same material again.

5 I'm trying to get at your role in those
 6 briefings. You said you attended some of them, you don't
 7 remember how many; right?

8 A Correct.

9 Q And do you think you ever spoke at any of
 10 those meetings?

11 A Sure.

12 Q Okay. Tell me some of the things you said.

13 A I don't have any idea.

14 Q Did you, for example, ever say that the law
 15 enforcement should be looking at all possible suspects?

16 A No, I don't -- I mean, I don't remember
 17 anything specifically that I said.

18 Q Do you -- So I guess we can just leave it like
 19 that. Let me just ask the question one more time to be
 20 sure.

21 So as you're sitting here today, you don't
 22 remember anything you said at any of those briefings?

23 A No. I mean, nothing specific. I would have
 24 just been communicating. I mean, I didn't sit there
 25 silently.

Page 28

1 Q And I, I understand, so I'm trying to get at,
 2 do you remember anybody saying anything that you
 3 responded to, any sort of remark made by somebody where
 4 you spoke up?

5 A Not specifically in this investigation, I
 6 don't recall. I mean, I, I could tell you some of the
 7 things that I might say in meetings like that.

8 Q Well, I don't think I'd care about what you
 9 might have said. I think I care about what you remember
 10 that you did say.

11 A I don't remember specifically, you know,
 12 anything. I'm sure I asked, you know, questions with
 13 regard to locations of different things, or which gas
 14 station, or what bank, or what, you know, just for my
 15 own personal knowledge, because I grew up around there
 16 and I kind of know geographically where things are, so I
 17 would have asked questions like that.

18 Q So you said your questions might relate to
 19 where Russ Faria went that night; would that be a fair
 20 statement?

21 A Not necessarily where he went, but I can --
 22 and again, I'm completely speculating, but --

23 Q Well, I don't want you to completely
 24 speculate.

25 A Okay.

1 Q I thought when you were talking a moment ago
 2 you began to have some recall of some of the things you
 3 said, and that's what I'm interested in.

4 A I'm just recalling my role typically in a
 5 situation, but I don't remember specifically about this
 6 Major Case call-out. I don't remember specific
 7 questions that I would have asked.

8 I just know typically the kinds of questions I
 9 would ask.

10 Q Okay. So let me go into some specifics about
 11 the case and see if that triggers some of your memory.

12 There's been some discussion about a paw print
 13 from the Faria dog on the pos derriere of the victim,
 14 Betsy Faria.

15 Do you remember anything about the paw print?

16 A I remember that someone said there was a paw
 17 print:

18 Q Do you know who that someone was?

19 A It was someone in the briefing.

20 Q And do you remember whether you made any
 21 comments, or made any suggestions about such a paw
 22 print?

23 A I don't remember making any suggestions, or
 24 comments.

25 Q Okay. Do you remember anything about any

1 A I don't know what led to it, or if I just
 2 said, I want to go out there whenever it's clear that I
 3 can go out there.

4 Q So did you ask someone whether you could go?

5 A I, I don't, I don't recall specifically, but I
 6 probably told the commander that.

7 Q That you wanted to go?

8 A That's, that's typical, that the prosecutor
 9 would go to the crime scene, so I let him know that I
 10 would like to go whenever the crime scene was cleared.

11 Q And Schimweg, is that who you're talking
 12 about, or McCarrick, or who?

13 A I don't remember if I told Schimweg, or I told
 14 McCarrick, or I told the sheriff, but I know that it was
 15 someone in higher rank than me knew that I wanted to go
 16 out when the crime scene was cleared, for me to be able
 17 to walk into it.

18 Q When you say higher rank, what do you mean by
 19 that?

20 A I mean they were conducting an investigation
 21 and I didn't want to interfere with that, I couldn't go
 22 in until that investigation and the crime scene had been
 23 cleared, so to speak, for me to be able to go in once
 24 they were done doing all the things that they do.

25 Q Now the word clear is, just to resolve any

1 suggestions that the dogs paws be checked for blood?

2 A I remember that that's -- Wait. Can you
 3 rephrase that question?

4 Q Sure. There's an issue in the case that
 5 relates to the question whether the dog's paws would be
 6 checked to see if there was blood on them.

7 And my question is, do you remember you're
 8 having any role in regard to that issue?

9 A I don't remember any role that I played, no.

10 Q There's -- So when was the first time you
 11 visited the crime scene?

12 A I think it would have been the 28th.

13 Q So the day after the murder?

14 A It was either the 28th -- I mean, it was some
 15 time during the Major Case call-out. I can't remember
 16 if it was the first day, or the second, or the third,
 17 but it was some time shortly after.

18 Q How did it come about that you went to the
 19 crime scene?

20 A I don't understand the question.

21 Q Sure. So one moment you are in your office,
 22 or you're in court, or you're at the Major Case Squad
 23 briefing, and the next minute you're going to that crime
 24 scene, what led to that decision to go to the crime
 25 scene?

1 ambiguity, sometimes the word clear means that there's
 2 no more bad guys hiding in the house, and sometimes it
 3 means that they're finished taking measurements, and
 4 photos, and that sort of thing; right?

5 A Correct. Not clearing a residence for safety
 6 purposes, but clearing so that other people can walk
 7 into it, so it doesn't contaminate the scene.

8 Q Right. Do, do you recall that there were
 9 gloves at the scene on the sofa near where Betsy Faria's
 10 body was?

11 A Based on my recollection of being at the
 12 scene?

13 Q Any part of your knowledge of the case.

14 Do you know, as you sit here now, that there
 15 were gloves on the sofa?

16 A I know that there were photographs -- I
 17 remember a photograph of gloves on the sofa, but I don't
 18 recall seeing those when I was there.

19 Q Do you recall any discussions during the Major
 20 Case Squad call-out regarding the gloves?

21 A No.

22 Q Do you recall any discussions about checking
 23 the gloves for blood?

24 A No.

25 Q When you were involved in those briefings, did

1 it seem to you that the Major Case Squad had identified
 2 a primary suspect?
 3 A I don't recall.
 4 Q When you were involved in those briefings, did
 5 it seem to you that the Major Case Squad was considering
 6 more than one suspect?
 7 A Yes.
 8 Q Okay. Who were they considering as suspects?
 9 A They ran down hundreds of leads for -- I mean,
 10 various leads they had people going out on.
 11 Q Yeah, the daughters; right?
 12 A I, I recall the daughter and maybe her
 13 boyfriend. There was an ex-husband, I believe.
 14 Q Somebody in Florida; right? A relative, or
 15 somebody? Maybe that was the ex. Does that ring a
 16 bell?
 17 A I don't remember where he was located.
 18 Q McCarrick spoke about somebody out of town;
 19 right?
 20 A I believe so. I know there were several
 21 different ideas, or avenues they went down.
 22 Q Okay. Fair enough. Do you remember whether
 23 there was any discussion in the Major Case Squad
 24 briefings that perhaps Pam Hupp had committed the murder
 25 of Betsy Faria?

1 A I know that they were looking at Pam Hupp as
 2 well.
 3 Q Let me just try to ask that question more
 4 specifically.
 5 Do you remember whether there was any discussion
 6 in any Major Case Squad briefing that Pam Hupp was a
 7 suspect in the murder of Betsy Faria?
 8 A I don't remember there being any discussion of
 9 anyone being a suspect, so to speak.
 10 Q Well, you knew that Russ Faria was in custody;
 11 didn't you? The first day. I mean, you knew that;
 12 right?
 13 A He was -- I didn't think he was in custody the
 14 first day. I don't remember when, and I don't know that
 15 I know, or knew when they placed him on a 24-hour hold.
 16 Q Well, okay, let me -- got to be careful of our
 17 semantics here.
 18 When you got to the briefing -- Well, when you
 19 got to the Major Case Squad headquarters, did you learn
 20 that Russ Faria was at the police station, and/or had
 21 been, been in discussions with law enforcement during the
 22 course of the prior night?
 23 A I learned that Betsy Faria's husband was a
 24 cooperating witness. That's what I learned when I first
 25 got there.

1 Q What's the next thing you learned about Russ
 2 Faria's involvement in the murder?
 3 A I don't recall.
 4 Q Do you understand as you sit here now that in
 5 the afternoon of the 28th, we'll call it roughly two
 6 o'clock, that Mr. Faria went to Lake St. Louis for a
 7 polygraph?
 8 A I know that he went for a polygraph, but I
 9 didn't know where he went.
 10 Q Did you have any influence in the decision
 11 that he would be taken for a polygraph?
 12 A No.
 13 Q When did you learn the results of the
 14 polygraph?
 15 A I don't remember.
 16 Q Did you learn it during the call-out?
 17 A Yes.
 18 Q Mr. McCarrick stated that once he had the
 19 results of the polygraph that he concluded that Russ
 20 Faria was, "his guy," I think was his term. Do you
 21 remember that in that meeting, in those meetings?
 22 A No.
 23 Q Have you ever seen the raw data results of
 24 that polygraph?
 25 A No.

1 Q Do you know where they are today?
 2 A No.
 3 Q Do you know if the polygraph examiner actually
 4 obtained raw data?
 5 Now raw data, what I mean is, in a polygraph
 6 they check things like respiration, blood pressure, heart
 7 rate, sweating, things like that; right?
 8 Do you understand that?
 9 A If you're explaining that to me, I don't know
 10 much about polygraphs and how they work.
 11 Q Okay. Well, I'll submit to you that a
 12 polygraph checks attributes of the body when the person
 13 is asked questions. Does that sound right to you?
 14 A Yes.
 15 Q And some of the things that are checked are
 16 the things that I mentioned. Does that sound right to
 17 you?
 18 A I don't know what's checked, but I know that
 19 they register certain things.
 20 Q Okay. Do you understand that a polygraph
 21 examiner normally has a formal written record of those
 22 bodily responses?
 23 MR. HEIGELE: Calls for speculation.
 24 Q (By Mr. Schock) I'm asking if she knows it.
 25 That's not speculation, that's, does she know?

1 A I don't know what typically occurs.
 2 Q Okay.

3 MR. HEIGELE: Hence, my objection.

4 Q (By Mr. Schock) Have you ever spoken to the
 5 polygraph examiner in the case, the one who examined
 6 Russ Faria on the 28th? About this, about this. That
 7 polygraph?

8 A At what period of time?

9 Q Any time since the -- since he took that
 10 polygraph, have you ever discussed that polygraph with
 11 him?

12 A I have spoken with him. I have not discussed
 13 the polygraph itself.

14 Q Okay. Tell me about your -- First of all,
 15 when did you have the conversation with the polygraph
 16 examiner?

17 A After the first trial, before the second.

18 Q What was the substance of the conversation?

19 A Do you have any other reports? Because
 20 defense attorney is now asking for them.

21 Q And what did he say?

22 A He said something to the effect of, I can't be
 23 specific, because I don't know exactly what he said, but
 24 he said he was -- I think he was at a different location
 25 at that point, a different agency, and he would have to

1 I don't know that they've -- It failed to retain
 2 it from the beginning, but they were never requested at
 3 the beginning, because by agreement, actually, by request
 4 of the defense counsel, there was no reference to be made
 5 to the polygraph, and so...

6 Q Well, polygraphs are inadmissible in court;
 7 right?

8 A Correct.

9 Q So that would be normal; right?

10 A Correct. So there was no reason to retain it.

11 Q Well, you understood that -- Did you
 12 understand during the Major Case call-out, Major Case
 13 Squad call-out that Mr. McCarrick believed that the
 14 results of the polygraph were dispositive as to who had
 15 committed the murder?

16 A No, I don't remember any conversation about
 17 what McCarrick thought about the polygraph.

18 Q As you sit here right now, do you have any
 19 knowledge of any way to obtain the raw data from that
 20 polygraph?

21 A Can you ask that again?

22 Q Sure. Do you know any way we could get that
 23 raw data?

24 A I don't.

25 Q Fair enough.

1 check with the agency, or wherever he was before and get
 2 back to me.

3 Q Did he get back to you?

4 A He did.

5 Q What did he say?

6 A He said that those records were -- something
 7 to do with his computer, or their computer, or
 8 somebody's computer, at any rate, had not retained those
 9 records, mostly, I guess -- well, I'm speculating as to
 10 why they weren't retained. I don't know why they
 11 weren't retained, but nonetheless, he didn't have them.

12 Q Is it your understanding as you sit here today
 13 that those records do not exist because of some sort of
 14 computer mechanical?

15 I mean, do you believe what he said?

16 A I have no reason to doubt him.

17 Q Well, that's not what I asked. Do you believe
 18 him?

19 A Sure.

20 Q And do you have any explanation as to why
 21 those computers, mechanical systems failed to retain
 22 that data?

23 A I don't know that they failed to retain the
 24 data, or that the data was -- had been either gotten rid
 25 of, or lost after the first trial.

1 MR. HEIGELE: You could do it now.

2 Q (By Mr. Schock) Let's go to the release of --
 3 Well, first of all, let me back up.

4 You understand that two officers went and
 5 interviewed Pam Hupp early in the morning on the 28th,
 6 roughly 6:00, 6:30 in the morning.

7 Do you know that?

8 A I do now.

9 Q When did you first learn of that interview of
 10 Miss Hupp?

11 A I don't remember. Some time during the Major
 12 Case call-out.

13 Q Okay. Do you remember that it was an officer
 14 named Kaiser, or maybe one named Smith who did that
 15 interview? Does that ring a bell?

16 A I remember Stephanie Kaiser.

17 Q She was one of the people who was there;
 18 right?

19 A Correct.

20 Q Do you remember Miss Kaiser making any oral
 21 report about that interview in any briefing that you
 22 were in at the Major Case Squad?

23 A I remember her talking about having gone
 24 there.

25 Q Do you remember anything she said about the

1 specifics of her conversation?
 2 A Just that she was cooperative.
 3 Q Do you remember anything that Miss Kaiser, or
 4 I will submit to you the other officer was named Smith;
 5 does that sound right?
 6 A It could be.
 7 Q Well, let's just assume I'm right on that;
 8 fair enough?
 9 A Okay.
 10 Q I'm pretty sure I'm right on that. Do you
 11 remember any details such as statements by Miss Hupp
 12 that Russ Faria had made comments to Betsy about
 13 smothering her with a pillow?
 14 A Do I remember any -- Can you rephrase that?
 15 Q Sure. I think you've said that you recall
 16 that Kaiser and Smith made some sort of report about
 17 their -- oral report now -- about their interview of
 18 Miss Hupp; right?
 19 A Correct.
 20 Q And you were there and you heard that; right?
 21 A I heard a report by them, but I don't remember
 22 them talking about a pillow. The only thing I remember
 23 specifically in their report back was that she was
 24 cooperative.
 25 Q Okay. And I want to kind of probe a little

1 bit, maybe I'll trigger some memories.
 2 Do you remember anything said by -- in their
 3 report that Russ Faria had been abusive to his wife?
 4 MR. HEIGELE: The oral report?
 5 Q (By Mr. Schock) Yeah. We're starting with
 6 the oral report.
 7 A I don't remember hearing that in a, in a Major
 8 Case briefing setting at all.
 9 Q You know now that that's what she said; right?
 10 A I don't remember her saying that he was
 11 abusive.
 12 Q Well, there's a, there's a transcript of that;
 13 right? Of that meeting with them, with Hupp and with
 14 Kaiser and Smith that morning on the 28th; right?
 15 A If there is, then Mr. Schwartz's office put
 16 that together. I've not read it.
 17 Q Tell me how you have obtained knowledge about
 18 the interview of Miss Hupp by Kaiser and Smith?
 19 A I don't remember specifically. I just know
 20 that over these last several years I've gained knowledge
 21 of it.
 22 Q Okay. And do you remember reading a report
 23 that they wrote during the four-day call-out?
 24 A I wouldn't have read it during the four-day
 25 call out.

1 Q Okay. Might have been prepared later?
 2 A Yeah. I, I wouldn't have gotten those binders
 3 for several months probably.
 4 Q And -- But you do remember that they did come
 5 and make some kind of an oral report?
 6 A I remember Stephanie Kaiser saying that, that
 7 Pam Hupp was cooperative, that's the extent of my memory
 8 of those -- that oral report anyway.
 9 Q Fair enough. Let's go now to the alibi
 10 witnesses. Is it your recall that during the first day
 11 there was a discussion of Russ Faria's whereabouts the
 12 night of the murder?
 13 A I don't know that I recall that, but I'm sure
 14 that that was the case.
 15 Q Okay. That's good enough. Do you recall that
 16 they were looking closely at his whereabouts during the
 17 day, and that he'd been -- it was pretty much
 18 established that he'd been at his home office at work
 19 until one o'clock; right?
 20 Does that sound right?
 21 A I know that's what he said.
 22 Q How do you know that's what he said?
 23 A Because I remember -- Well, because I've
 24 watched the interview and know he said that.
 25 Q And I'm not really as interested in -- Well,

1 I'm interested in the interview depending on when you
 2 watched it.
 3 When did you watch that interview?
 4 A Before trial.
 5 Q Okay. Before trial's a long period of time.
 6 Did you see it in December of 2011?
 7 A Oh. No, not in December.
 8 Q The first four days after the murder?
 9 A No.
 10 Q Did you see it before January 4th, say, after
 11 Mr. Faria was in jail?
 12 A I would doubt it. I don't think so.
 13 Q All right.
 14 A I may have. I don't remember.
 15 Q All right. Fair enough. Do you remember that
 16 the Major Case Squad was interested in Mr. Faria's
 17 whereabouts on the 27th of December, 2011?
 18 A Yes.
 19 Q That was, that was pretty important to them;
 20 wasn't it?
 21 A Correct.
 22 Q And we know now that he was at work that day;
 23 right?
 24 Do you question that, or do you agree with that,
 25 until five o'clock?

1 A I don't know where he was. I know where he
 2 says he was until five o'clock that day.
 3 Q Okay. Well, did you do any checking of his
 4 records with his employer, because he worked on
 5 computers and phone calls for his employer; right?
 6 A Correct.
 7 Q I mean, did you check with them to see whether
 8 he, in fact, had engaged in his job during that period
 9 of time, until five o'clock?
 10 A I did not.
 11 Q Did anybody?
 12 A I believe so.
 13 Q Who did that?
 14 A I can't recall.
 15 Q Was that a known fact during the call-out?
 16 A What?
 17 Q That he'd worked that day until five o'clock?
 18 A I don't, I don't know if it was a known fact
 19 to anybody. It may have been, but it wasn't to me.
 20 Q Okay. How about that he went to various
 21 places to get the dog food, and the cigarettes, and the
 22 gas between 5:00 and 6:00 p.m. on the 27th, did you know
 23 that during the Major Case Squad call-out?
 24 A Yes.
 25 Q How did you learn that during the Major Case

1 Squad call-out?
 2 A I think somebody reported it.
 3 Q In one of those briefings?
 4 A I believe so.
 5 Q Did you believe that he had gone to those
 6 places?
 7 A I believe so. I don't remember at the time
 8 what I thought. I think they provided video footage, or
 9 something, so I would have -- whenever I saw that, I
 10 would have believed it, sure.
 11 Q Sure. I mean, there he was --
 12 A Yes.
 13 Q -- pumping gas.
 14 A Right. But I don't know when I saw those.
 15 Q Okay. Fair enough. Is it your recall that an
 16 issue in the matter was where he -- was his whereabouts
 17 between 6:00 and 9:00 that night?
 18 A I don't recall.
 19 Q During, during the Major Case Squad call-out,
 20 was an issue going around in the discussions of law
 21 enforcement as they investigated the crime, his
 22 whereabouts between 6:00 and 9:00?
 23 A I recall that the issue was where he was after
 24 his wife got home.
 25 Q Okay. Because it was kind of a known fact

1 that she had gotten home around 7:00, or 7:15; right?
 2 That was a pretty much known fact?
 3 A That was the belief.
 4 Q Okay. I mean, the evidence pointed to that;
 5 right?
 6 A That's what -- That was the belief based on
 7 witness statements.
 8 Q Sure. Including Pam Hupp; right?
 9 A Correct.
 10 Q And including, there was some kind of phone
 11 call between Pam Hupp and her husband, and maybe Betsy
 12 had gotten on the phone; right? About 7:15, does that
 13 ring a bell?
 14 A Betsy had left a message for Pam Hupp's
 15 husband, as I recall.
 16 Q Right. And that was a known fact because
 17 they'd looked, because some investigators had looked at
 18 the husband's phone?
 19 A It was a known fact that she left the message,
 20 but it was not a known fact as to where she was when she
 21 left the message.
 22 Q Fair enough. But it was a pretty solid fact
 23 that she was alive a little after 7:00; right?
 24 A It was a solid fact that she was alive when
 25 she left the message, whatever time that was.

1 Q And was it your understanding that that was a
 2 few minutes after seven?
 3 A It was after seven, but I can't tell you what
 4 time.
 5 Q You think it was before eight?
 6 A Correct.
 7 Q So it was some time before 7:30, does that
 8 sound right?
 9 A That sounds correct.
 10 Q So she was alive between 7:00 and 7:30, and
 11 that was a known fact in the investigation; right?
 12 A Correct.
 13 Q So there really wasn't a lot of thought that
 14 Russ Faria had killed his wife before he left his home
 15 to go to get the dog food, and the gas, and all that;
 16 right?
 17 A Correct.
 18 Q Now, are you aware that Russ Faria asserted
 19 that between 6:00 and 9:00, and when I say asserted, I
 20 mean what he had said in his interviews in the course of
 21 the night after the murder, that he'd been at some
 22 friends for game night, a regular event that he had with
 23 his pals?
 24 A Am I aware that he said that?
 25 Q Yes.

1 A Yes, I'm aware.
 2 Q And you were aware during the call-out that
 3 that was what he said; correct?
 4 A Correct.
 5 Q Because you went to the briefings; right? At
 6 least some of them?
 7 A At least some of them.
 8 Q And that was a subject of major discussion;
 9 right?
 10 A Not in all of them, but it was, it was
 11 certainly discussed at some point.
 12 Q Okay. And so it's a fair statement that if
 13 Russell Faria was at game night between 6:00 and 9:00
 14 with his friends, he couldn't be at home at 7:15; right?
 15 A Can you ask that again?
 16 Q You can't be two places at once; right?
 17 A I will agree you can't be two places at once.
 18 Q So if the alibi witnesses were telling the
 19 truth, he was with them between, as we said, roughly
 20 7:00 to 7:30; right?
 21 A I don't understand the question.
 22 Q Well, sure. If Russ Faria said in his
 23 statements, we've established that, and you knew about
 24 it during the call-out, that he'd been with his friends
 25 from 6:00 to 9:00; right?

1 A Yes, he said that.
 2 Q And that's, that's an alibi in this case;
 3 right?
 4 A Correct.
 5 Q Okay. And you knew that the office -- some
 6 officers had gone and interviewed the alibi witnesses;
 7 right?
 8 A I knew that they did at some point, yes.
 9 Q Well, you knew they did it the morning after
 10 the murder; right?
 11 A I don't know when I learned that they had done
 12 that.
 13 Q Well, that was a major discussion in the Major
 14 Case Squad; wasn't it?
 15 MR. HEIGELE: Misstates her testimony as to
 16 quote, unquote, "major" that she was a part of.
 17 A I don't remember when I learned that they had
 18 been there to talk to the people that Russ said he was
 19 with that night.
 20 Q (By Mr. Schock) We're talking about Corbin,
 21 Sweeney, Holian, Bach, maybe one other I can't remember;
 22 right?
 23 A That's all.
 24 Q Okay. So you're not, as you sit here now, you
 25 don't remember discussions on, for example, the first

1 day about officers having interviewed those alibi
 2 witnesses; is that true?
 3 A I don't remember specific discussions. I'm
 4 sure they would have said somebody went and followed
 5 this lead and talked to these people, but I don't
 6 remember anything specific about that.
 7 Q Now in his deposition, Mr. McCarrick said that
 8 he believed that Mr. Faria was, in fact, at the alibi
 9 witness, Corbin's house, from 6:00 to 9:00.
 10 Do you remember that that was a conclusion of
 11 the Major Case Squad, a consensus of the people working on
 12 it?
 13 MR. HEIGELE: That misstates his testimony.
 14 That's not the consensus of the Major Case Squad. It
 15 was the belief of Detective McCarrick.
 16 MR. RETTER: I'll join.
 17 MR. SCHOCK: And I think that's correct, and I
 18 want to restate. Thank you very much.
 19 MR. HEIGELE: That's why I'm here.
 20 MR. SCHOCK: Just to help, right?
 21 Q (By Mr. Schock) Let's go back. You were
 22 present for McCarrick's testimony; right? His, his
 23 deposition a few weeks ago?
 24 A I was.
 25 Q And he said that it was his opinion that the

1 A Correct.
 2 Q The Case Squad's investigation included
 3 whether Russ Faria could have committed the murder;
 4 right?
 5 A Correct.
 6 Q I mean, you can't charge somebody with a
 7 murder unless there is a way that he can have done it,
 8 which is consistent with the known forensic physical
 9 evidence; true?
 10 A You can't charge someone with a murder without
 11 probable cause to do so.
 12 Q Which means there has to be a way to believe
 13 that the person's whereabouts and ability to do the
 14 murder is consistent with the physical evidence;
 15 correct? And the other, and the oral evidence; correct?
 16 A I think it's a matter of semantics, if a crime
 17 has been committed, and you have probable cause to
 18 believe that a person committed a crime, you can charge
 19 the crime.
 20 And a lot of things go into whether or not you
 21 have probable cause. The person's whereabouts is not the
 22 only thing that would go into it.
 23 Q Of course. Do you agree with the statement,
 24 though, that if, let's say, a person is a suspect in a
 25 crime, take, take the relative, I think it was Florida,

1 A That's true.
 2 Q And that's why alibi testimony in a murder
 3 case, where there's a suspect is very important; is that
 4 a true statement?
 5 A That would be true.
 6 Q Okay. And so McCarrick said that he believed
 7 that Russ Faria was with Michael Corbin and the others
 8 at Corbin's house from 6:00 to 9:00; right?
 9 A That's what McCarrick said, yes.
 10 Q Now you were at some of those meetings. Was
 11 it your sense that that was just McCarrick's opinion, or
 12 it was the opinion of, sort of a consensus of the people
 13 in the briefings on the Major Case Squad?
 14 A I don't remember McCarrick ever offering his
 15 opinion at the briefings. His job was to be the report
 16 writer.
 17 I don't remember him offering any opinion,
 18 because he didn't follow any leads.
 19 Q Well, was it -- You're familiar with how the
 20 Major Case Squad works; right?
 21 A Correct.
 22 Q Officers rely on each other; right?
 23 A They do.
 24 Q And the point is, someone might go out and
 25 investigate a lead and they come back and report on what

1 let's just say it was Florida, right, and because the
 2 person was a relative, maybe that person was a suspect;
 3 right? Had to be checked; right?
 4 MR. HEIGELE: Just a check, I think it was an
 5 ex-husband instead of a relative.
 6 Q (By Mr. Schock) Okay. Correct?
 7 A He had to be checked as to --
 8 Q Whether he was going to be somebody who
 9 committed the murder; right?
 10 A Well, yes.
 11 Q And that guy turned out to have been out of
 12 state?
 13 A Correct.
 14 Q So he really wasn't a suspect anymore; right?
 15 A Correct.
 16 Q Because he wasn't there; right?
 17 A Correct.
 18 Q So do you agree that if someone is not with
 19 the person who was murdered at the time of the murder,
 20 then they didn't commit the murder; is that true?
 21 A I believe if a person isn't with the victim at
 22 the time of the murder, they didn't personally commit
 23 the murder.
 24 Q Okay. That's pretty logical; right? Nothing
 25 complicated about that?

1 they found; right?
 2 A That's correct.
 3 Q And then that information's put in the mix;
 4 right?
 5 A That's correct.
 6 Q It's customary, in fact, to rely on what
 7 officers say about what happened when they go out and
 8 investigate a lead; right?
 9 A Absolutely.
 10 Q They trust each other; right?
 11 A That's correct.
 12 Q That's the essence of what they're doing, is
 13 to work together; right?
 14 A Yes.
 15 Q Okay. Do you remember whether various
 16 discussions occurred during the Major Case Squad
 17 call-out, during these briefings -- And were the
 18 briefings someone standing up and saying what they knew,
 19 or were they discussions? What about that?
 20 A The briefings that I was present for involved
 21 the commander asking whomever was at the table what they
 22 learned on the specific leads they went out on.
 23 Q Perfect.
 24 A Those people would say.
 25 Q And then would there be discussion among the

1 group about how that fit into the larger context of the
2 investigation?

3 A Not typically at that point. They would just
4 report on what they found, and then that would determine
5 whether or not it led to another lead.

6 Q Well, you had to discuss the meaning of the
7 lead to do that; right?

8 A I don't understand the question.

9 Q Well, you just said that when they finished a
10 report on a lead, then that information would be put
11 into the mix to decide whether to continue to pursue a
12 given lead, to go in a different direction, that
13 involved discussion; right?

14 A But the discussion wasn't specifically about
15 the, the report that they said, as I recall.

16 Q Well, all -- Lots of leads were coming in all
17 the time; right?

18 A Correct.

19 Q People were going out and investigating
20 things; right?

21 A Correct.

22 Q And these discussions, or the point was to try
23 to assemble information to find out the truth; correct?

24 A It was -- The purpose was to try to manage the
25 leads with the manpower that was there to handle them.

1 Q But the overriding purpose was determined, was
2 to determine who killed Betsy Faria; right?

3 A The overriding purpose was to gather as much
4 information as possible in a short amount of time.

5 Q Well, there was no purpose to sift through
6 that information and determine who the murderer was?

7 Was it only to gather information, or was it
8 also to draw conclusions?

9 A I don't think the -- I don't think it's their
10 goal. I would be speculating as to what their goal is,
11 because I don't know.

12 Q Do you think one of their objectives was to
13 exclude people who surely didn't commit the murder, like
14 the ex-husband in Florida. Was that an objective?

15 A I don't know.

16 MR. SCHOCK: Do you want to take a break?

17 MR. BRUNTRAGER: I do.

18 MR. SCHOCK: It's 10:11, should we go off the
19 record?

20 MR. HEIGELE: I was going to ask if you were
21 at a breaking spot.

22 MR. SCHOCK: Let's go off the record.

23 [Whereupon, there was a short break].

24 Q (By Mr. Schock) Miss Askey, where we were was
25 discussing this Major Case Squad thought, collective

1 thought maybe of Russell Faria's whereabouts from 6:00
2 to 9:00.

3 And I want to know -- I guess we've established
4 that McCarrick stated that it was his opinion in the
5 briefings that Russ Faria was at Corbin's house from 6:00
6 to 9:00.

7 Do you remember that?

8 MR. HEIGELE: It's misstates the testimony.
9 You're talking about his deposition.

10 Q (By Mr. Schock) He said at the deposition for
11 sure; right?

12 A At the deposition he said that that was his
13 belief, correct.

14 Q And let's now go back -- Thank you,
15 Mr. Heigele -- let's now go back to those briefings.

16 Do you remember any discussions in those
17 briefings about the question as to whether Russell Faria
18 was or was not at Corbin's house from 6:00 to 9:00?

19 A I remember discussion that he said that he was
20 at Corbin's house from 6:00 to 9:00, and I remember
21 discussion that Corbin and the other three said he was
22 there during that evening.

23 Q Do you remember whether there was any
24 discussion of the credibility of those statements?

25 A I don't remember discussion regarding the

1 credibility, no.

2 Q I mean, do you agree that -- Well, you said
3 that the purpose of the Major Case Squad was to gather
4 information?

5 A Correct.

6 Q And I started to ask you, I guess maybe that's
7 when we stopped, whether it was also to obtain the truth
8 as to what happened, as opposed to just gathering
9 information, but actually figure out what occurred?

10 A Well, that would be the ultimate hope, sure.

11 Q Right. That's the object of the game; right?

12 A Correct.

13 Q Do you agree with the statement that to do
14 that, people on the Major Case Squad have to discuss
15 leads, weigh credibility of witnesses, things like that?

16 MR. HEIGELE: Vague, but go ahead.

17 A They certainly discuss leads and do their best
18 to verify what they're told.

19 Q (By Mr. Schock) Do you remember whether
20 McCarrick said in any Major Case Squad meetings that he
21 believed that Russ Faria was at Corbin's house that
22 night?

23 A No.

24 Q So you don't remember either way, or you
25 remember he didn't say that?

1 A I don't remember McCarrick speaking in those
2 meetings.

3 Q Okay. Do you remember anybody else stating
4 that it was their belief, based on all the information
5 that had been gathered through the point of the
6 statement that Russ Faria was, in fact, at Corbin's
7 house?

8 A No.

9 Q So you don't remember anybody really saying
10 that in those meetings?

11 A No.

12 Q Do you remember a discussion which was in the
13 other direction, oh, gosh, he wasn't there?

14 A No.

15 Q So you don't remember either way any
16 discussions about Faria's whereabouts between 6:00 and
17 9:00 on the 27th of December, 2011?

18 A I remember just the discussions that I told
19 you about, that he said he was there, and that they said
20 he was there, but not whether anyone believed that to be
21 truthful, or not truthful, for that matter.

22 Q Do you remember any discussions about the
23 first responders' remarks about the condition of the
24 body when they arrived at roughly -- You agree they
25 arrived at roughly 9:50 on the 27th, is that about the

1 A I think five.

2 Q How many had you done at the time of this
3 murder?

4 A That was my second.

5 Q Okay. Tell me about the first one. What
6 happened?

7 What was the subject of the first one?

8 A It was a murder.

9 Q In Lincoln County?

10 A Correct.

11 Q And did that murder end up with -- Did that
12 investigation reach a conclusion as to who had committed
13 the murder?

14 A Yes.

15 Q Was that person prosecuted by you?

16 A He was.

17 Q What happened in that prosecution?

18 A The prosecution prevailed.

19 Q Plea, or trial?

20 A Trial.

21 Q Did you try that case yourself?

22 A I did.

23 Q Do you believe that the person who was found
24 guilty of that murder did, in fact, commit that murder?

25 A I do.

1 time they got there? Pretty close?

2 A Give or take five or 10 minutes.

3 Q Okay. So do you remember any discussions in
4 the Major Case Squad, meetings about what the first
5 responders, fire and ambulance said about the condition
6 of the body?

7 A Vaguely.

8 Q What do you remember?

9 A I remember, I remember that someone was
10 assigned to talk to them.

11 Q Right.

12 A Well --

13 Q There's reports about that?

14 A Well, I'm not, I not sure that I remember
15 that. I don't know if they made statements to our, the
16 deputies that were first on scene and that's how the
17 information trickled back, or if someone was assigned
18 specifically to speak with them.

19 But somehow, I remember that some of their
20 statements came back to the Major Case Squad.

21 Q Okay. How many Major Case Squad
22 investigations have you been involved in in your role as
23 prosecutor?

24 A Now?

25 Q Yes. Through today.

1 Q So at the time of this Major Case Squad
2 call-out, it wasn't your first time, you were familiar
3 with their procedures; right?

4 A Somewhat.

5 Q And you were familiar with the fact that they
6 relied on each others' thoughts and conclusions; right?

7 If an officer went out and pursued a lead and
8 came back and reported on it, the people on the Major Case
9 Squad presumed that the officer who went out and pursued
10 the lead had done it competently, and brought back an
11 accurate report; correct?

12 A Correct.

13 Q Now, as you sit here now, we were talking
14 about the fire and ambulance first responders, as you
15 sit here now, do you remember that they reported that
16 the body's condition indicated that the body had been
17 dead for an hour or two when they got there?

18 A No, that's not what I recall.

19 Q What do you recall?

20 A I just recall that there was conflicting
21 perspectives as to what those individuals witnessed, or
22 believed that they witnessed, compared to what the law
23 enforcement officers that were on the scene witnessed,
24 or believed they witnessed, I recall that it was
25 conflicting.

1 Q So McCarrick talked about this extensively in
 2 his depo; right?
 3 A I don't remember that, but he may have.
 4 Q Well, he said something along the lines that
 5 the blood was --
 6 MR. HEIGELE: Sopping, I believe he said.
 7 Q (By Mr. Schock) Sopping, is that what the
 8 word was? We had confusion over the word. But the
 9 blood was still wet. Do you remember that?
 10 A I remember that he said someone said that,
 11 yes.
 12 Q And you remember that he also said that the
 13 first responders said that the body had rigor mortis?
 14 A I don't recall him saying that.
 15 Q Do you remember anybody saying that?
 16 A No.
 17 Q Do you remember anybody saying that the body
 18 was cold, that it was not the temperature of a live
 19 body, but was colder?
 20 A I don't remember anyone comparing it to a live
 21 body.
 22 Q Do you remember any statement that it was cool
 23 to the touch?
 24 A I remember a statement that it was cool to the
 25 touch.

1 Q Okay. And do you, when you talk about that
 2 process of relying on each other, do you understand that
 3 the firemen and the ambulance were actually not on the
 4 Major Case Squad; correct?
 5 A Correct.
 6 Q Do you remember that any inclination either
 7 way, whether people on the Major Case Squad normally
 8 relied on observations of first responders, such as fire
 9 and ambulance?
 10 MR. HEIGELE: Calls for speculation.
 11 Q (By Mr. Schock) I'm asking if she knows.
 12 A I don't know.
 13 Q As to the condition of the blood, do you
 14 remember what was said by different people during the
 15 Major Case Squad meetings about the condition of the
 16 blood when the first responders arrived, police, fire,
 17 ambulance?
 18 A I don't remember what they said with regard to
 19 when the first responders arrived. I remember what they
 20 said as to their own observations of the blood.
 21 Q Okay. What did they say?
 22 A I don't remember the word exactly, but it
 23 wasn't dry.
 24 Q Was it coagulated? Does that word ring a
 25 bell?

1 A It does not ring a bell.
 2 Q Set up, does that word ring a bell?
 3 A It does not.
 4 MR. SCHOCK: Looks like I forgot to turn on
 5 the camera for the last 15 minutes. Could have paid
 6 more to have somebody come and do it.
 7 MR. HEIGELE: Could have paid for a nicer
 8 room, too. No offense, Joel.
 9 MR. BRUNTRAGER: This is a lovely room.
 10 MR. SCHOCK: This is lovely office, and you're
 11 a lovely man, Joel.
 12 MR. BRETT: Hope all this is going on the
 13 record.
 14 MR. SCHOCK: Can we agree by consensus to back
 15 up and take off the record to where the giggling and
 16 remarks started that had nothing to do with what we're
 17 talking about.
 18 MR. HEIGELE: That's fine. We can edit it.
 19 MR. SCHOCK: Jane, redact from the record
 20 those remarks, please.
 21 MR. HEIGELE: He's a powerful man, by the way.
 22 Q (By Mr. Schock) How about recall of
 23 statements from those first responders as to rigor
 24 mortis?
 25 Do you remember those -- What was said in the

1 A No.
 2 MR. HEIGELE: And you're talking about Major
 3 Case Squad briefings?
 4 Q (By Mr. Schock) Right. In the briefings.
 5 A No, I don't, not in the briefings.
 6 Q Do you remember anything about how long any
 7 first responders stated in any reports, or in meetings
 8 with Major Case Squad members that they thought the body
 9 had been deceased when they arrived at the house?
 10 A I don't remember there being a time discussed.
 11 Q You don't remember anything about an hour or
 12 two?
 13 A No.
 14 Q I want to turn now to the release of Mr. Faria
 15 on the 29th.
 16 Do you recall that at roughly three or four
 17 o'clock on the 29th that Mr. Faria was released from
 18 custody of the police?
 19 A I recall that he was released. But I don't
 20 know what time, or anything like that.
 21 Q Do you -- Well, did you have anything to do
 22 with his release? Any influence on that decision?
 23 MR. HEIGELE: To the point it calls for
 24 speculation.
 25 MR. SCHOCK: Well, I'm not asking about her

1 speculation. I'm asking about her involvement. That's
 2 not speculation.
 3 A I was not involved with telling him, I mean,
 4 telling them to release him, if that's what you're
 5 asking me.
 6 Q (By Mr. Schock) I am asking you if you had
 7 any involvement?
 8 Did you discuss with the police, did you discuss
 9 with the sheriff's department personnel, the Major Case
 10 Squad, anybody, the fact that Russ Faria was going to be
 11 released on the 29th?
 12 A I don't recall having a conversation
 13 specifically about his release.
 14 I recall that his 24-hour hold would have
 15 extinguished at some point, and absent the filing of
 16 charges, by law he would have been released.
 17 Q Sure. There's no charges filed. Now you
 18 understand it's a disputed fact when we think the
 19 custody, when he was formally in custody, but let's set
 20 that aside, okay, that's not an issue in this
 21 deposition.
 22 A Okay.
 23 Q Before his release, and I will submit to you
 24 it was on the 29th in the afternoon, does that sound
 25 right?

1 A Sure. I don't know. I don't know when it
 2 was. Actually, I don't know when it was.
 3 Q Do you recall that you had any discussions
 4 with anyone in law enforcement that might be called a
 5 presentation to you, or a suggestion to you that you
 6 file a murder charge against Russ Faria?
 7 A Yes.
 8 Q Tell me about those conversations.
 9 A I don't recall if they were conversations, or
 10 if they actually submitted a probable cause statement to
 11 me.
 12 Q Do you agree that it was your decision whether
 13 to issue a charge at that time?
 14 A Yes.
 15 Q So you don't remember whether they spoke to
 16 you when they submitted a probable cause statement, but
 17 it was one of those; is that a fair statement?
 18 A That's a fair statement.
 19 Q And do you know whether that was on the day of
 20 his release, or the day before, or do you know when that
 21 was?
 22 A It would have been towards the end of his
 23 24-hour hold.
 24 Q Do you remember what evidence they presented
 25 to you in support of a theory that Russell Faria was --

1 A Correct.
 2 Q That's your only memory of this part of the
 3 process?
 4 A Correct.
 5 Q And you remembered that you decided there was
 6 not enough; is that right?
 7 A Correct.
 8 Q And did you give any advice to law enforcement
 9 that he needed to be released, or anything like that?
 10 A No.
 11 Q Do you remember making any statements to the
 12 press after his release?
 13 A Yes.
 14 Q Okay. And tell me what you said to the press?
 15 A I don't remember specifically what I said.
 16 But I would have used one of my standard canned answers,
 17 I'm sure.
 18 Q Okay. Well, what were your standard canned
 19 answers?
 20 A Something to the effect of, we're hopeful to
 21 gather enough evidence at some point to provide justice
 22 for the victim in our case.
 23 Q Okay. Hang on one second. I'm going to --
 24 Okay. I've got a document in front of me, and now we're
 25 going to go to our first use of these books behind us.

1 We've got to get to page 1445.
 2 And that should be in book six, which would be
 3 on the top right behind you.
 4 See if that's -- The numbers are in the lower
 5 right corner.
 6 MR. HEIGELE: What's your page? What's your
 7 lead?
 8 MR. SCHOCK: It's page 1445 of plaintiff's
 9 disclosures.
 10 MR. HEIGELE: What's your tab? Which tab?
 11 MR. SCHOCK: What tab? Is that the pages?
 12 It's page five. I did my math wrong.
 13 MR. SWANSON: Thirty-three.
 14 MR. BRUNTRAGER: Fourteen forty-five is what
 15 you're looking up?
 16 MR. SCHOCK: Yes, sir. Would you open it up
 17 to 1445.
 18 Q (By Mr. Schock) Okay. Have you seen that
 19 document before, ma'am?
 20 A I don't know if I have, or not.
 21 Q Well, it's a report by KSD.com, and it's dated
 22 December 30th at 7:16 p.m.; right?
 23 A Yes.
 24 MR. HEIGELE: Just as an over-reaching
 25 objection, I would object as to hearsay, and that's my

1 objection.
 2 Q (By Mr. Schock) Okay. Would you tell me --
 3 Would you read that page and tell me when you're done
 4 reading it, please.
 5 A Okay.
 6 Q It goes on the next page. Just read through
 7 the next page, too.
 8 A Okay.
 9 Q Okay. Now, it says the writer of this
 10 document says that you said that the Major Case Squad
 11 was going to work into the weekend to try to charge
 12 someone.
 13 Do you recall telling that to the reporter?
 14 A No.
 15 MR. HEIGELE: Well, I'm saying to the extent
 16 it misstates the actual words of the document, I object,
 17 but --
 18 Q (By Mr. Schock) Do you remember saying words
 19 to that effect to the reporter, what is said there in
 20 the first paragraph?
 21 A Absolutely not.
 22 Q Did you say any words along those lines to
 23 that reporter?
 24 A Not that I recall.
 25 Q Go to the second, the right-hand column.

1 A Yes.
 2 Q And it's the first full paragraph. Would you
 3 read that slowly into the record, please?
 4 MR. HEIGELE: Same objections.
 5 A "The Lincoln County Prosecutor hopes it's only
 6 a matter of time before she can charge him with murder.
 7 The prosecutor is fast-tracking DNA and fingerprint
 8 tests, as well as cell phone records."
 9 Q Okay. So you're the Lincoln County
 10 prosecutor; right?
 11 A I am.
 12 Q Did you say words to that effect to the
 13 reporter?
 14 A No.
 15 Q Did you say words to that effect to anybody
 16 from the press?
 17 A No.
 18 Q Did you say words to that effect to anybody
 19 involved in law enforcement?
 20 A No.
 21 Q Did you say words to that effect to anybody?
 22 A No.
 23 Q Is it your belief that the reporter is making
 24 up that story and completely misquoting you?
 25 A Yes. Not mis -- It's not my belief that the

1 reporter's making up the story. It's my belief that the
 2 reporter is misquoting.

3 Q What did you say?

4 A I don't recall specifically what I said. But
 5 I'm sure something like what I said to you a moment ago.

6 Q So this remark that he says you said, that it
 7 was only a matter of time before you can charge him, now
 8 "him" is Russell Faria; right?

9 A I don't know who "him" is with regard to what
 10 Mike Rush thought. I have no idea.

11 Q Well, the, the prior paragraphs indicate that
 12 by context the "him" is the husband; right?

13 Do you agree with that?

14 A It says investigators arrested a man
 15 Wednesday. It doesn't say who.

16 Q Well, the only one who had been arrested was
 17 Russell Faria; right?

18 MR. HEIGELE: I think the thing says what the
 19 things says. That was the objection made the first time
 20 you looked at the document.

21 A This document doesn't suggest that it's Russ
 22 Faria at all.

23 Q (By Mr. Schock) Okay. That's your
 24 interpretation of that, and I accept it. I don't accept
 25 it, but I understand that's your position.

1 So as to this statement attributed to you by
 2 Mr. Mike Rush of KSDK, that you hope it's only a matter of
 3 time before she, that would be you, can charge him with
 4 murder, you deny saying that?

5 A Correct.

6 Q And then it says, you're fast-tracking DNA and
 7 fingerprint test as well as cell --

8 MR. HEIGELE: I was going to, after you finish
 9 your question, I was going to object to it again, that
 10 the document is hearsay, does not specifically state
 11 anything about Leah Askey, doesn't state specifically
 12 anything about Russell Faria, doesn't make any statement
 13 as to guilt, and that's my objection.

14 If I could have a continuing objection to this,
 15 that's fine.

16 MR. SCHOCK: Of course.

17 MR. HEIGELE: Okay.

18 Q (By Mr. Schock) So let's talk about this
 19 statement in the article. The prosecutor is
 20 fast-tracking DNA.

21 Did you make any statement to Mike Rush or any
 22 member of the press about fast-tracking DNA?

23 A No. I wish there were a way to do that. So I
 24 never made that statement.

25 Q Did you make any statements to the press,

1 including Mike Rush, about fingerprint tests?

2 A No.

3 Q Did you make any such statements, any
 4 statements to such people about cell phone records?

5 A Not that I recall. They may have asked me a
 6 question about it, and I may have said those have been
 7 sent off, or something to that regard, but I would have
 8 never said anything was getting fast-tracked, because
 9 there isn't a possibility to fast-track, that I am aware
 10 of.

11 Q Okay. Was there a formal press conference or
 12 anything that you participated in on that day, or the
 13 next day? That day being the 29th.

14 A I don't recall if in this case there was.

15 Ordinarily in a Major Case call-out there's a
 16 press conference that the Major Case Squad calls, but I
 17 don't remember specifically if there was one in this case,
 18 or not.

19 Q Do you remember even whether you made any
 20 statements to the press, as you sit here now? You've
 21 talked about a statement you might have made, which is
 22 sort of what you always make; right?

23 A Correct.

24 Q Now slightly different question: Do you
 25 remember whether you did make any statement to the press

1 on the 29th or 30th of December, 2011, about Faria, the
 2 Faria murder?

3 A On the 29th?

4 Q Or 30th.

5 A I obviously spoke with Mike Rush at some
 6 point. If there was a press conference, I would not
 7 have spoken at that, that would have only been the
 8 commander and possibly the sheriff.

9 Q Okay. So you do think you spoke to Mike Rush?

10 A I recall speaking to Mike Rush.

11 Q Do you remember when it was, in terms of -- we
 12 can put it in context maybe, before or after Russ
 13 Faria's release, do you have any knowledge of that?

14 A I recall that it was dark outside. That's
 15 what I remember.

16 Q It was wintertime, so it might have been early
 17 on the evening of the December 29th, the day of his
 18 release. Does that sound right?

19 A I don't know specifically when it was, but I
 20 remember that it was dark outside.

21 Q Was there anybody else there for the
 22 conversation?

23 A I don't recall.

24 Q Do you know, was it, was it, he sort of saw
 25 you and said, hey, do you have a second to talk, or was

1 it some kind of a formal event where you said I'll talk
 2 to anybody? What's the context?

3 How did you come about to talk to him?

4 A He was in the parking lot when I walked out to
 5 go to my car.

6 Q And he said will you speak to me?

7 A Yes.

8 Q And you said?

9 A I said sure.

10 Q And you talked to him?

11 A Yes.

12 Q So did you talk to him any other time in those
 13 couple of days?

14 A I don't believe so.

15 Q Do you believe this report, even though you
 16 disagree with its contexts -- its contents, relates to
 17 that conversation?

18 A It doesn't appear to have anything in it that
 19 was involved in that conversation, but I don't believe I
 20 spoke with Mike Rush on any other time.

21 Q Okay. Fair enough. Do you, as you sit here
 22 now, believe you used the term fast-track with Mike Rush
 23 in that conversation?

24 A No.

25 Q Do you believe that you used any words that

1 could be interpreted to mean fast-track?

2 A I don't believe so.

3 Q Do you remember talking to the Major Case
 4 Squad, anybody in the personnel of Major Case Squad
 5 after Russ Faria's release about any attempt to gather
 6 further evidence in the case?

7 MR. HEIGELE: Could you restate that, please?

8 Q (By Mr. Schock) Sure. After Russell
 9 Faria's -- Let me start over.

10 After Russ Faria's release, did you talk to
 11 anybody in the Major Case Squad about gathering further
 12 evidence on the question of who had murdered Betsy Faria?

13 A I don't recall speaking with them.

14 Q You don't recall saying we need more evidence
 15 to charge him or anybody else, to anybody on the Major
 16 Case Squad?

17 MR. HEIGELE: You mean other than the initial
 18 discussions as to the first probable cause statement?

19 Q (By Mr. Schock) When you say the first
 20 probable cause statement, are you talking about one that
 21 might have been presented to her --

22 MR. HEIGELE: Yeah.

23 Q -- before his release?

24 MR. HEIGELE: That's the conversations she's
 25 already had.

1 Q (By Mr. Schock) Right. Now I'm going to a
 2 new time frame, after his release, asking whether you
 3 recall any conversations with anybody in the Major Case
 4 Squad about trying to gather more evidence, and get
 5 enough evidence to charge Russ Faria, or anybody else?

6 A No. I, I recall they were still running down
 7 leads.

8 Q Okay. Anybody other than the Major Case Squad
 9 and law enforcement you had such conversations with?

10 A No.

11 Q Are you aware that there was a probable cause
 12 statement submitted on January 3rd?

13 A I'm aware that one was submitted somewhere
 14 around that time frame.

15 Q And pursuant to that, with that probable cause
 16 statement you charged Russ Faria with murder; right?

17 A Correct.

18 Q And he was arrested; right?

19 A Correct.

20 Q Well, did you issue the charge on the 3rd, do
 21 you remember? Did you actually file the charge on the
 22 3rd, and maybe he was arrested the next day; does that
 23 sound right?

24 A I don't remember if I filed it the same day he
 25 was arrested, or if I filed it the day before.

1 Q Do you know as you sit here now what
 2 additional evidence was gathered by law enforcement
 3 after Russell Faria's release on the 29th, which, in
 4 your mind, was sufficient to issue the charge on
 5 January 3rd or 4th, whatever day you actually filed it?

6 A I don't remember specifically the -- how much
 7 additional information was, was gathered, or was added
 8 to the probable cause statement.

9 Q At that time did you form a belief as to when
 10 the murder occurred?

11 A At what time?

12 Q Between the time when Russ was released on the
 13 29th and you issued the murder charge, did you form an
 14 opinion as to when the murder occurred?

15 A No.

16 Q Would you say that at that point it was
 17 between, say the earliest time it could have been was
 18 that phone call, which was after 7:00, the phone call
 19 between -- when Betsy left the message with Pam Hupp's
 20 husband, and when first responders found her body dead,
 21 we agreed with that; right?

22 A I would agree that it occurred some time after
 23 she spoke with her daughter on the phone, and when Russ
 24 Faria called 9-1-1.

25 Q In the course of issuing the charge, and

<p style="text-align: center;">Page 85</p> <p>1 thinking -- you didn't think a lot about the case and 2 the evidence, that's your job; right? 3 A Correct. 4 Q Did you form an opinion as to whether -- Did 5 you form an opinion based on the evidence as to whether 6 your, in your opinion, Russ Faria had been with Corbin 7 between roughly 6:00 and 9:00? 8 A I didn't have an opinion at that point. 9 Q Okay. Did you have an opinion as to whether 10 the body had been dead for a substantial amount of time, 11 being at least half an hour, minimum half an hour, 12 before Russ Faria called 911? 13 A I didn't have an opinion at that point. 14 Q Is it a fair statement that you issued the 15 murder charge without then having a theory of when Russ 16 Faria murdered Betsy Faria? 17 A No. That's not a fair statement. 18 Q Okay. Then help me reconcile those two 19 statements. I thought you said you didn't -- 20 MR. HEIGELE: She just testified as to when 21 the murder had to have occurred. 22 Q (By Mr. Schock) Well, you put it between 7:00 23 and the time of the call, right, to the 911 call, after 24 the call to his daughter? 25 A Which is about 7:20, I believe.</p>	<p style="text-align: center;">Page 87</p> <p>1 A Not with regard to timeline, no. 2 Q Well, you were at those briefings when the 3 first responder's observation of stiffness, blood and 4 temperature had been stated; right? I mean, you knew 5 about that; right? 6 MR. HEIGELE: Misstates testimony. 7 A I knew that they had -- someone had said 8 something about being cool to the touch, and someone had 9 said something about stiff. It might have been the same 10 person, it might have been a different person. I'm not 11 sure about that. 12 Q (By Mr. Schock) Did you think it was your 13 duty as a prosecutor to get into the details of when 14 the -- when this person you're charging had committed 15 the crime, other than that general time frame that we 16 spoke of? 17 I'll use the term general time frame as 7:15, 18 7:20, the call with the daughter and the 911 call. 19 MR. HEIGELE: It's argumentative, and it's 20 asked and answered. 21 A I don't understand the question. 22 Q (By Mr. Schock) Sure. Let me go back. 23 Do you believe it was your duty as a prosecutor 24 in issuing a charge of murder to get specific about how 25 the crime had occurred, including the time?</p>
<p style="text-align: center;">Page 86</p> <p>1 Q Okay. 2 A And 9:41 when 911 was called. 3 Q What I'm asking is, did you formulate an 4 opinion, more specific than that, or was it just your 5 opinion it occurred during that time? 6 MR. HEIGELE: At the point of when? 7 Q (By Mr. Schock) When you filed the murder 8 charge. 9 A When I filed the murder charge, I knew that 10 the murder had occurred between the times she spoke on 11 the phone, "she" being Betsy, with her daughter, and 12 when Russ Faria came home and called 911. 13 Q And that was the extent of your opinion as to 14 the time at that time? 15 A Sure. 16 Q Not more specific than that? 17 A Correct. 18 Q Were you aware that those first responders, 19 police, excuse me, fire and ambulance, had indicated, 20 based on their observations, that the body had been dead 21 for an hour or so when Russ made the call? 22 MR. HEIGELE: Asked and answered. 23 A I wasn't aware of those specific statements. 24 Q (By Mr. Schock) Well, were you aware that 25 statements to that effect had been made by those people?</p>	<p style="text-align: center;">Page 88</p> <p>1 A No. 2 Q Did you believe these statements that you had 3 heard, or were aware of about coolness, stiffness, and 4 blood condition, that it was, first, as to the first 5 two, cool and stiff, and as the second two, that there 6 was some contradictory evidence; right? Soppiness, 7 versus coagulant setup? 8 MR. HEIGELE: It misstates the testimony as to 9 the time frame in which these discussions were had in 10 context of the filing of the charges, and the Major Case 11 Squad, so it's argumentative and it's vague, so, and I 12 believe it's been asked and answered. 13 But if you want to, I guess, rephrase it in 14 another way, or have her reread it, and she can try to 15 notice it, that's fine. 16 Q (By Mr. Schock) First of all, do you remember 17 the question I asked? 18 A No. 19 MR. SCHOCK: Okay. Jane, would you please 20 reread the question. 21 MR. HEIGELE: Sorry. 22 [Reporter read back the question on page 88, 23 line 2]. 24 A I didn't understand the question. 25 Q (By Mr. Schock) Okay. I'll ask it again.</p>

1 Were you, when you issued the charge, aware that
 2 the first responders had indicated that the body was stiff
 3 when they arrived?

4 A Yes.

5 Q Were you aware that the first responders had
 6 indicated that the body was cool when they arrived?

7 A Yes.

8 Q Were you aware that there was -- there were
 9 statements from first responders and police officers
 10 that were somewhat contradictory of the condition of the
 11 blood when they arrived?

12 A Yes.

13 Q And the contradiction was that some said it
 14 was soppy, whatever the right word is, and some said it
 15 was setup, and/or coagulated; true?

16 A I don't remember setup, and/or coagulated. I
 17 remember soppy, or something like that.

18 Q Do you remember anybody saying that the blood
 19 was settled?

20 A No. I remember there was contradiction in
 21 their understanding of it.

22 Q Okay. Did that information about stiffness
 23 and coolness lead you to any conclusion as to how long
 24 the body had -- how long Betsy Faria had been dead when
 25 the first responders arrived?

1 A No.

2 Q Is that because you didn't consider it?

3 A It's because I didn't trust it.

4 Q Sounds like what McCarrick said. Why didn't
 5 you trust it?

6 A For a variety of reasons.

7 Q What were those reasons?

8 A Well, it was cold outside, the doors were wide
 9 open. There was no indication -- There was indication
 10 from the first responder that he touched the body for
 11 less than a second with two fingers on her forearm.

12 He was wearing, they were all wearing big parka
 13 coats and gloves, so I didn't trust that.

14 We knew that the body had, had to be alive at
 15 7:20, and we knew that she was dead at 9:40, so the best
 16 scenario, or the worst scenario is that she had been dead
 17 just over two hours.

18 My limited knowledge of rigor mortis and how
 19 long it takes would not have a body be completely stiff in
 20 a two-hour window, so I didn't trust the information.

21 Not to mention, one of the first responders
 22 indicated that once they realized that this was not a
 23 suicide, they directed everyone else to go outside, so
 24 there wasn't a lot of firsthand information.

25 It was all kind of trickling through two or

1 three individuals, and then back through law enforcement,
 2 and then back to the Major Case Squad.

3 Q Well, there were reports written, weren't
 4 there? About -- By the first responders?

5 A I don't remember if they wrote reports, or if
 6 law enforcement wrote reports after they spoke with
 7 them.

8 Q Did you review any reports about the condition
 9 of the body before you issued the charge?

10 A I don't -- I didn't review any reports,
 11 because there weren't any written reports at that point
 12 that I recall.

13 Q So it was all oral?

14 A As I recall, yes. I didn't review anything
 15 written until much later.

16 Q All right. I'd like now to turn to this
 17 luminescence test issue.

18 Do you recall that there was something done
 19 called a luminescence test?

20 A Yes.

21 Q What is your understanding of what was done in
 22 that test?

23 A Can you be more specific?

24 Q Yeah. What was the test? What were they
 25 testing? What did they do?

1 that it was -- I mean, it was your decision to take it
 2 to the judge; right?
 3 I mean, you -- Let me restate.
 4 They take it, but you got to sign it; right?
 5 A Correct. And as I sit here today, I'm not 100
 6 percent positive that I am the one that signed that
 7 application, but it's likely that I did.

8 Q Okay. I think you did.
 9 A Okay.
 10 Q As you sit here today, do you remember
 11 discussions with the law enforcement officers about that
 12 search warrant application, which you had in connection
 13 with your decision to affix your signature?

14 A I don't remember specific discussions about
 15 that application, no.

16 Q Did they drop it off and you signed it, or did
 17 you talk to them about it?

18 A I don't recall.

19 Q Did you, did you ever speak to anyone in law
 20 enforcement and suggest that they do such a test?

21 A No.

22 Q Did you have any theory at that time about --
 23 that, that Russ Faria had gone directly to a towel
 24 drawer, and only he would know where the towel drawer
 25 was?

1 the towel drawer to get something to cleanup?

2 A I don't know that that was ever a theory.

3 Q Was something like that a theory?

4 A The theory was, there was a cleanup in the
 5 kitchen, and it appeared that a towel, or something out
 6 of that drawer, or that that drawer was accessed during
 7 that time.

8 Q After her death?

9 A I don't know that that was -- Well, yeah,
 10 sure, after her death.

11 Q Because I mean, there's no blood before her
 12 death; right?

13 A Well, I mean, it isn't -- Yes. Correct.

14 Q Okay. And who came up with that theory?

15 A I don't recall.

16 Q Was it before the issuance of the probable
 17 cause statement which accompanied the murder charge,
 18 that that theory became the subject of discussion?

19 A No.

20 Q It was after?

21 A I believe so.

22 Q Were you present for the luminescence test?

23 A No.

24 Q Did you know when it was happening?

25 A Not specifically.

1 A No.

2 Q Have you ever heard anything in this case
 3 about that theory? Is that new today to you?

4 A It's not new today.

5 Q Okay. Tell me how you heard about that theory
 6 in the past.

7 A I don't think I heard about it. I think that
 8 there was a drawer facing that luminesced, one of -- the
 9 only one in the kitchen, and it happened to be the towel
 10 drawer. And it wasn't right next to the sink, it was a
 11 few drawers over, as I recall, at least one or two
 12 drawers over.

13 Q So was it a theory of the prosecution that
 14 Russ Faria went to that drawer, and only he would know
 15 what was in that drawer, which is what we're trying to
 16 show with the luminescence test; does that sound right?

17 MR. HEIGELE: At what point are you talking?

18 Q (By Mr. Schock) When the decision was made to
 19 make the test.

20 A Not when the decision was made to make the
 21 test, no.

22 Q Tell me when that theory came up.

23 A What theory?

24 Q The theory that only Russ Faria would know
 25 where the towel drawer was, and he had gone straight to

1 Q Did you know that the house had not been
 2 secure in the interim since Russ Faria's release, and
 3 the test?

4 A Yes.

5 Q Did you have concern that any evidence that
 6 might be gathered of any kind of cleanup might have been
 7 a cleanup that occurred after his release --

8 A No.

9 Q -- on the 29th?

10 A No.

11 Q Why not?

12 A Because photographs were taken and video, I
 13 think, if I -- if memory serves me correctly, I think
 14 there was even a video taken of the scene, during the
 15 time that the Major Case was called out, so that would
 16 have captured blood, if you will, on the, on the floor
 17 in a photograph.

18 Q Well, there was blood near her body; right?

19 A Sure.

20 Q There was no blood on his clothes; right?

21 A Correct.

22 Q There was no -- Well, let me retract that.

23 Do you remember that some law enforcement
 24 personnel in connection with the Major Case Squad had
 25 concluded that there had been no cleanup?

1 A I didn't -- I did not know that.
 2 Q And when I say cleanup, I mean the Major Case
 3 Squad had found no odor of cleaning materials; correct?
 4 Does that ring a bell?
 5 A No.
 6 Q How about that there had been seen no swiping
 7 motions on the floor, anything like that?
 8 A I don't remember anything about that.
 9 Q Do you remember, do you remember anything
 10 about the condition of the floor, that it was dirty?
 11 MR. HEIGELE: Go ahead, if you know.
 12 A I don't remember anything about that, at the
 13 time.
 14 Q (By Mr. Schock) Right. I'm only asking you
 15 before the probable cause statement. I'm asking you
 16 about your decisions to issue the charge now.
 17 This luminescence test occurred; right? You
 18 were aware it occurred?
 19 A Correct.
 20 Q And then did the officers come and talk to you
 21 about it?
 22 A I'm sure they did.
 23 Q Who came and talked to you about it?
 24 A I don't recall.
 25 Q Does it sound like -- If I told you that

1 Mr. Merkel, at the end of the table, was involved in the
 2 tac test, would that ring a bell?
 3 A I knew that he was involved in the test, but I
 4 don't remember if he came and spoke with me about it.
 5 Q And his wife, I think she might have had a
 6 different name then; right? Does that sound right?
 7 A Correct.
 8 Q But she was also involved in the test; right?
 9 A I didn't know who was involved in the test.
 10 Q And did they submit to you a report?
 11 A At some point they did.
 12 Q Do you remember what the contents of the
 13 report was?
 14 A No.
 15 Q Did you use that report to -- Let me restate
 16 that. Did that report influence your decision to issue
 17 the charge?
 18 A I wouldn't have had that report for some time
 19 after the charge was made.
 20 Q So is it a fair statement that to the extent
 21 that the luminescence test had anything to do with your
 22 decision to charge Mr. Faria, it was based on oral
 23 communications from the people who were involved?
 24 A That's correct.
 25 MR. HEIGELE: And a probable cause statement

1 that was sworn out by the law enforcement officer?
 2 A That's correct.
 3 Q (By Mr. Schock) Including what he said.
 4 A Correct.

5 MR. HEIGELE: Just trying to keep you honest.
 6 MR. SCHOCK: I appreciate that.
 7 MR. HEIGELE: I know.

8 Q (By Mr. Schock) You were aware that the
 9 officers used a camera during luminescence test; is that
 10 correct?

11 At the time that it occurred, you knew that they
 12 were going to use a camera; right?

13 A I don't know if I knew that that was part of
 14 it, or not, at the time.

15 Q When they talked to you about it, did they say
 16 anything about using a camera?

17 A No.

18 Q Were you aware that they took pictures?

19 A I don't know if I was at the time. I wouldn't
 20 have -- When they do their investigation and they do
 21 different things, I don't necessarily know the protocol
 22 in which those things occur.

23 I don't know how they work. I'm not trained in
 24 that area, so I don't know -- when they say we want to go
 25 and do -- apply Bluestar and see if we can get, you know,

1 any information, or evidence, gather any evidence, then
 2 okay, let's, you know, give me an affidavit and tell me
 3 why. But they don't say this is how we're going to do it.
 4 I don't know any of those things.

5 Q Okay. Well, you are aware now that they took
 6 pictures; right?

7 A Correct.

8 Q And you're aware now that the officers took
 9 the position that the photographs showed absolutely
 10 nothing; right?

11 A That's incorrect.

12 Q Okay. What did they tell you that their
 13 pictures showed, at any time in this case?

14 A They told me that the camera did not capture
 15 what their eyes saw.

16 Q And in fact, in the time of the first trial,
 17 there were no pictures given to the defense counsel
 18 team; right?

19 A Well, that's incorrect.

20 Q Well, tell me about that.

21 A On at least four separate occasions defense
 22 counsel was given and provided in discovery, our
 23 evidence logs, which included a log for each search
 24 warrant that was conducted.

25 And on those logs it contained the reports and

1 disks for photos. That was communicated to them, they
 2 were given them. They elected not to go to the evidence
 3 locker and look at them.

4 Q When was the first time you saw the
 5 photographs of the luminescence test?

6 A I'm not certain.

7 Q Was it between the two trials?

8 A Yes.

9 Q Okay. So you had not seen them before the
 10 first trial?

11 A Correct.

12 Q Do you know how the photographs were delivered
 13 to defense counsel's office?

14 A I believe I hand-delivered them to Mr. Swanson
 15 in my office.

16 Q You elicited testimony in the first trial from
 17 Mr. Merkel that the camera malfunctioned; is that
 18 correct?

19 A I don't remember the testimony I elicited from
 20 him specifically, but I know that there was a
 21 malfunction in the camera and it had to be sent off.

22 Q And the malfunction was that, such a severe
 23 one that there were no pictures; right?

24 MR. HEIGELE: That misstates his testimony,
 25 but to that event, if you can testify as to that.

1 whether the pictures accurately showed, and were
 2 representative of the luminescence test results?

3 A Yes.

4 Q What was the response?

5 A No.

6 Q Okay. How were they different?

7 A Because the camera did not capture what their
 8 eyes saw when they performed the test.

9 Q So you think the pictures, when finally they
 10 did show up, when you gave them to Mr. Swanson, or a
 11 representative anyway, is that a fair statement of what
 12 they'd seen?

13 A They were not representative of what they had
 14 seen while they were there performing the test live.

15 Q And as you sit here now, you believe that?

16 A Yes.

17 Q Okay. The probable cause statement, which
 18 accompanied the murder charge, was prepared by
 19 Mr. McCarrick; is that right?

20 A Probably.

21 Q Who was in charge of that investigation before
 22 you issued the murder charge?

23 A At what point?

24 MR. HEIGELE: I was going to say, that's vague
 25 as to what, quote, unquote, "the investigation at that

1 A I don't recall what his testimony was.

2 Q (By Mr. Schock) Okay. Well, we'll look at
 3 that later, and see what the -- the truth will be in the
 4 transcript.

5 Have you looked at those pictures? Did you look
 6 at those pictures between the two trials?

7 A At some point I did.

8 Q When?

9 A I don't know specifically when.

10 Q Before the trial, second trial started?

11 A Yes.

12 Q And do you believe that those were all the
 13 pictures that were taken, the ones that were presented
 14 to Mr. Swanson in your office?

15 I mean, were there any pictures that weren't
 16 turned over? Let's put it that way.

17 A I believe a disk was turned over, which was
 18 the disk from evidence, because they decided they wanted
 19 to see it at that point. So that's why I looked at it,
 20 because then they were going to be looking at it.

21 Q When you looked at it, did you ask Mr. -- Did
 22 you, did you talk to Mr. Merkel or anybody else involved
 23 in the test about it?

24 A I'm sure I did.

25 Q Did you ask the question in that conversation

1 point."

2 Q (By Mr. Schock) I appreciate that. I am
 3 going to rephrase to make this more clear. Let's break
 4 it up into some time frames.

5 Based on the knowledge that you have right now
 6 sitting here today, do you have an opinion as to who was
 7 in charge of the investigation of the murder of Betsy
 8 Faria in the 12 hours after that murder?

9 A Yes.

10 Q Who?

11 A In the first four hours would have been the
 12 sheriff, and thereafter, would have been the commander
 13 of the Major Case Squad.

14 Q Mr. Schimweg?

15 A Correct.

16 Q Now how long did he remain in charge of that
 17 investigation?

18 A Until the Major Case Squad disbanded.

19 Q So he was the boss of the investigation, and I
 20 think there was testimony that that ended on the 31st;
 21 right?

22 A Correct.

23 Q Does that sound right?

24 A Yes.

25 Q That sounds like the right date to you?

1 A It believe it was New Year's Eve, yes.
 2 Q So he was in charge during that period. Who
 3 was in charge of the investigation on the first,
 4 second -- well, until you filed the charge, the murder
 5 charge?

6 A Well, inasmuch -- From like a hierarchy
 7 position, it would go back to the sheriff.

8 Q So the sheriff was in charge?

9 A But the case would have been designated to an
 10 individual.

11 Q Do you know who that individual was?

12 A I believe it was McCarrick.

13 Q And he worked for Lincoln County; right?

14 A Correct.

15 Q Did he know about the luminescence test?

16 A Yeah, I think he was present.

17 Q Did you have any meetings with McCarrick over
 18 the course of the time period after the Major Case Squad
 19 call-out ended, and you received the probable cause
 20 statement from him?

21 Did you speak to him at all?

22 A I would have spoken with him when he applied
 23 for a search warrant.

24 Q And tell me the substance of that
 25 conversation.

1 A I don't recall the substance, other than he
 2 was applying for a search warrant.

3 Q He presented you with written materials?

4 A Correct.

5 Q You reviewed them?

6 A Correct.

7 Q Do you remember now what those materials said?

8 A No.

9 Q I mean, we have a copy of it; right?

10 A Right.

11 Q The copies, you've seen the copy, you remember
 12 signing it; right?

13 A Yeah. I remember him applying, I remember
 14 signing it, I remember a judge signing off, I remember
 15 them going and doing that.

16 Q Okay. Did you discuss the paw print on the
 17 pos derriere of Betsy Faria with anybody in law
 18 enforcement before you filed the charge against Russ for
 19 murder?

20 A I'm sure I did.

21 Q Tell me the substance of those conversations,
 22 who you had them with and what was said.

23 A I don't remember specifically who I had them
 24 with, but I remember asking if there were any other paw
 25 prints in blood anywhere else in the house.

1 Q And the answer was?

2 A No.

3 Q So why was the, whether it was a paw print, or
 4 not, relevant?

5 A Well, because the dog was outside, according
 6 to your client, the dog was outside when he got home.
 7 And there appeared to be a paw print in blood on the
 8 victim's body, and there wasn't any -- there weren't any
 9 other paw prints throughout the house.

10 So unless the dog had wings and flew out, that
 11 seemed unlikely.

12 Q I mean, Russ Faria could have carried him out;
 13 right? That was one theory; right?

14 A I don't remember that being a theory.

15 Q Okay. Could have been there wasn't a paw
 16 print at all; right?

17 A That was not my belief.

18 Q Okay. How were you so sure it was a paw
 19 print?

20 A It looked like a paw print.

21 Q There was -- Was there a test of that material
 22 on the clothing? It was on her clothing; right?

23 A Correct.

24 Q Was there a test to see whether that was DNA,
 25 blood, DNA?

1 A I don't recall the substance, other than he
 2 was applying for a search warrant.

3 Q He presented you with written materials?

4 A Correct.

5 Q You reviewed them?

6 A Correct.

7 Q Do you remember now what those materials said?

8 A No.

9 Q I mean, we have a copy of it; right?

10 A Right.

11 Q The copies, you've seen the copy, you remember
 12 signing it; right?

13 A Yeah. I remember him applying, I remember
 14 signing it, I remember a judge signing off, I remember
 15 them going and doing that.

16 Q Okay. Did you discuss the paw print on the
 17 pos derriere of Betsy Faria with anybody in law
 18 enforcement before you filed the charge against Russ for
 19 murder?

20 A I'm sure I did.

21 Q Tell me the substance of those conversations,
 22 who you had them with and what was said.

23 A I don't remember specifically who I had them
 24 with, but I remember asking if there were any other paw
 25 prints in blood anywhere else in the house.

1 A At what point?

2 Q At any point. Well, before the probable cause
 3 statement.

4 A I mean, I wasn't aware that one had been
 5 conducted at that point.

6 Q Okay. Let me ask you a question: Do you
 7 recall that the forensics on the cabinetry and the tiles
 8 of the floor came back no blood in, say, roughly March
 9 of 2012?

10 A I don't remember what they specifically said,
 11 but I know they tested negative for whatever it was we
 12 were testing -- they sent them, or we sent them off to
 13 be tested for.

14 Q Do you believe that that negated the
 15 luminescence test?

16 A No.

17 Q Why not?

18 A Because the criminalist was able to explain
 19 why that would happen, and how that could happen.

20 Q Tell me what the criminalist said.

21 A The criminalist said we are already working
 22 with a surface that's -- I don't know if it was,
 23 difficult's the right word, but the long and the short
 24 of it is, the surface already appeared to be clean, so
 25 there was already diluents that were used on that

1 surface. And the test itself requires the use of more
 2 diluents so that they --

3 Q I'm sorry. What's that word you're using?

4 MR. HEIGELE: Diluents.

5 Q Diluents.

6 A We call it diluents.

7 MR. HEIGELE: Well, I mean, stupid attorney
 8 talk. It's diluents.

9 A Okay. In the medical world I think --
 10 whatever. They use liquid to clean, if it were cleaned,
 11 there would have been liquid used to clean.

12 Q (By Mr. Schock) Okay. Let's, we got to way
 13 back up here, because I don't know who "they" is. Let's
 14 set our time frames, okay. I want to start over in this
 15 conversation.

16 A Okay.

17 Q I got lost on your pronouns.

18 A Okay. Sorry.

19 Q There was a luminescence test done; right?

20 A Correct.

21 Q Mr. Merkel said it shows certain things, and
 22 that appeared in Mr. McCarrick's probable cause
 23 statement?

24 A True. I believe Mr. McCarrick was present
 25 during the luminescence test.

1 Q Okay.

2 A So I'm not certain if his probable cause
 3 statement indicated what, what Merkel said, or not, or
 4 whether it was just his own observations.

5 Q But the probable cause statement basically
 6 included information about that luminescence test;
 7 right?

8 A That's correct.

9 Q And in fact, wasn't that the only additional
 10 evidence that was gathered between the release of
 11 Russell Faria on the 29th, and the filing of the charge
 12 on the 3rd?

13 MR. HEIGELE: Calls for speculation, but you
 14 can answer.

15 Q (By Mr. Schock) I need to rephrase then.

16 What evidence do you know of that was gathered,
 17 between the release of Russell Faria on the 29th, and the
 18 charge on the third of January, that was new during that
 19 time period? What was gathered, what evidence was
 20 gathered against Mr. Faria?

21 MR. RETTER: Other than the Bluestar?

22 Q (By Mr. Schock) Other than the Bluestar.

23 A I don't know.

24 Q I mean, you issued the charge; right?

25 A Correct.

1 Q I mean, you said no, we've established you
 2 said no on the 29th; right?

3 A I said no when the first P.C. was presented,
 4 or discussed.

5 Q Right. And then you said yes?

6 A Correct.

7 Q A few days later?

8 A [Nodding].

9 Q What evidence was gathered in the intervening
 10 period that led you to change your mind?

11 A I don't remember what specifically they had
 12 gathered before, or after. I just, by the time the
 13 charge was issued, I believed that they had met their
 14 probable cause.

15 Q Do you agree that the belief as to that they
 16 had met probable cause had to be based on evidence?

17 A Sure.

18 Q And so is it a fair statement that there must
 19 be -- there must have been new evidence, or you would
 20 have had the same opinion you'd had a few days earlier;
 21 right?

22 A Or that they included it in their probable
 23 cause.

24 Q Oh, so there was information you didn't know
 25 on the 29th that had already been gathered that you got

1 in the interim?

2 A Perhaps.

3 Q Was there any such evidence?

4 A I don't know.

5 Q Well, on the 29th, didn't you make a strong
 6 and diligent inquiry and try to examine all relevant
 7 evidence to see if there was enough evidence to charge
 8 Mr. Faria?

9 MR. HEIGELE: It's argumentative, misstates
 10 testimony.

11 A It's not -- I don't gather evidence.

12 Q (By Mr. Schock) I know. You, you receive
 13 evidence from law enforcement, and you make a decision
 14 as to whether to charge; right?

15 A I receive a statement. And if I believe that,
 16 in the four corners of that statement, or what they are
 17 giving me indicates that there's probable cause, then
 18 I'll issue a charge. If, if it doesn't, then I won't.

19 But oftentimes they don't put all the
 20 information that they have on the document, and there may
 21 be extra information that they just haven't included at
 22 that point.

23 Q Well, do you think that law enforcement, when
 24 they're getting ready to approach a prosecutor to issue
 25 a charge, tries to include all the relevant information?

1 MR. HEIGELE: Speculation, vague.
 2 A My job would be much easier if they did that,
 3 yes.
 4 Q (By Mr. Schock) How often, in your
 5 experience, have they not done that?
 6 MR. HEIGELE: Again, same objection.
 7 Argumentative.
 8 A How often in my experience have they not done
 9 what?
 10 Q Not given you all the information that they
 11 have in some sort of coherent form so you can make an
 12 evaluation, that they just leave things out, how often
 13 has that happened to you, as a prosecutor?
 14 MR. HEIGELE: Same objection.
 15 A Often.
 16 Q (By Mr. Schock) Tell me about some times when
 17 that's happened.
 18 MR. HEIGELE: Same objection.
 19 A We want to do a search warrant on this house,
 20 there was a rape that was committed in whatever year, we
 21 believed that this person is the person that committed
 22 the rape, and we believe that he resides in this house,
 23 and went to go in and search the house for this person
 24 and bring him out so that we can get his DNA.
 25 There's an example.

1 Q (By Mr. Schock) Well --
 2 MR. HEIGELE: Which is totally unrelated to
 3 this case.
 4 A Correct.
 5 Q (By Mr. Schock) I understand that. It's not
 6 exactly my question.
 7 You told me a moment ago that it was a common
 8 event that law enforcement, when coming to you seeking to
 9 have a charge issued, which is different than getting a
 10 search warrant, right, and sometimes they wouldn't present
 11 all the relevant evidence in favor of issuing the charge;
 12 is that what you meant to say to me a moment ago?
 13 MR. HEIGELE: It misstates her testimony. Now
 14 it's argumentative.
 15 Q (By Mr. Schock) But that's why I'm asking her
 16 what her testimony was. I want to understand her
 17 testimony.
 18 A My testimony is that oftentimes law
 19 enforcement, when they come to me, they may talk to me
 20 about a case, they may talk to me about the situation,
 21 but when it comes down to the brass tacks of putting it
 22 on the paper, they miss connecting elements that would
 23 warrant probable cause.
 24 They may have it in their mind, and they may
 25 have articulated it verbally, but they haven't put it on

1 the paper, in which case I can't issue.
 2 Q Now you might send them back and say, hey,
 3 work harder on this; right?
 4 A Actually, I just refuse it.
 5 Q Okay. And in this case, you refused it;
 6 right? On the 29th.
 7 A Correct.
 8 Q And we don't have a copy of what they
 9 presented to you; right?
 10 A Correct. And I don't know if they presented,
 11 or if they just verbally said, this is what we got. I
 12 don't know.
 13 Q Have you ever written a probable cause
 14 statement for the officer?
 15 A No.
 16 Q Did you do it in this case?
 17 A No.
 18 Q In this case, do you believe that what they
 19 presented to you was somehow incomplete, and it included
 20 information other than what was in the luminescence
 21 test?
 22 Let me restate that. Give me another chance
 23 with that one, okay.
 24 You've indicated that on the 29th they came to
 25 you, either with a writing or orally, and said here's what

1 A Correct.
 2 Q What else --
 3 A It was my understanding that a luminescence
 4 test had been performed. I didn't know that it hadn't
 5 been until they applied for a search warrant asking for
 6 one.
 7 Q So on the 29th you thought it had already been
 8 done?
 9 A Correct.
 10 Q Who told you that?
 11 A Nobody. I just assumed that that was part of
 12 it.
 13 Q Well, when they showed up with the request for
 14 the search warrant, you sure knew it hadn't been done;
 15 correct?
 16 A Correct.
 17 Q As you sit here now, just -- I don't mean to
 18 ask this question one more time, but I'm going to, you
 19 don't know of any evidence, other than the luminescence
 20 test, which was given to you on January 3rd or 4th that
 21 hadn't been given to you on the 29th; is that true?
 22 A I don't know that that's true.
 23 Q Okay. Well, then try to help me with what
 24 additional evidence you had, other than the luminescence
 25 test on the 3rd.

1 MR. HEIGELE: It's asked and answered.
 2 MR. SCHOCK: Well, but she, she said there
 3 might be more, so that's why I'm asking it again.
 4 MR. HEIGELE: She doesn't know.
 5 A I don't remember.
 6 Q (By Mr. Schock) Let's let her testify. You
 7 don't remember?
 8 A I said I didn't believe there was probable
 9 cause on the 29th, and when I issued the charge I did
 10 believe there was probable cause, so there was
 11 additional information provided to me between those two
 12 dates.
 13 I don't remember what additional information,
 14 but I remember that I believed it met the standard, and
 15 therefore, I issued the charge.
 16 Q Fair enough.
 17 MR. HEIGELE: You at a breaking point?
 18 MR. SCHOCK: Sure.
 19 MR. HEIGELE: I figured that was a --
 20 MR. SCHOCK: Let's go off record.
 21 [Whereupon, there was a short break].
 22 Q (By Mr. Schock) Back on the record.
 23 So Miss Askey, now what I'm going to do is kind
 24 of go through my notes and some of these questions will be
 25 a little disjointed; okay?

1 A Okay.
 2 Q Do you remember directing CSI Investigator
 3 Pratt to take an impression of the dog's paw?
 4 A No.
 5 Q Do you think you did that?
 6 A I know that I didn't do that.
 7 Q You know that you did not.
 8 Did you speak to the sheriff about the
 9 investigation after the conclusion of the Major Case Squad
 10 call-out, and your filing of the probable cause statement
 11 and the charge of murder?
 12 A I don't remember speaking to him.
 13 Q Why don't you look at that probable cause
 14 statement.
 15 And it's not in that book, it's in, it's in book
 16 seven. Can we grab book seven?
 17 We can put five back in the left column there.
 18 Go to page 1968, if my math is right.
 19 MR. BRUNTRAGER: Let the record reflect that I
 20 got the book.
 21 MR. HEIGELE: What's your tab?
 22 MR. SCHOCK: Tell me when you're at that page.
 23 MR. HEIGELE: Hold on.
 24 MR. SWANSON: Back to 54.
 25 MR. HEIGELE: He's at 1968 starting, yeah.

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1 cause statement was in your mind; fair?
 2 A It's fair. But I wouldn't have considered it
 3 with regard to issuing a charge.
 4 Q Okay. Now the -- In D, which is on 16 --
 5 1969, it talks about this cap; right?
 6 In the middle of D.
 7 A Uh-huh. Yes. I'm looking at it.
 8 Q And that was something that you think he
 9 either had on at some point, or there it was and it was
 10 found; right?
 11 I mean, it says it was found there.
 12 A Correct.
 13 Q Did it seem odd to you that they were focusing
 14 on this cap, but his clothes didn't have any blood?
 15 A No.
 16 Q Did you consider at all the concern that they
 17 never found a fabric that matched the fabric mark on the
 18 plate, the light plate?
 19 MR. HEIGELE: It's argumentative. Assumes
 20 facts not in evidence at this point.
 21 A What was the question?
 22 Q (By Mr. Schock) Do you remember there was
 23 some fabric mark on the light plate?
 24 A I remember there was a pattern on the light
 25 plate.

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1 Q Yeah, as though a piece of fabric had touched,
 2 wasn't that what the thought of the Major Case Squad and
 3 others working on it?
 4 A I don't remember the Major Case Quad having
 5 any thought as to what had touched the light switch.
 6 Q Do you remember that there was no evidence of
 7 cleanup, such as towels? There were no dirty towels, or
 8 anything like that?
 9 A I remember that there were not any towels with
 10 blood on them.
 11 Q Right.
 12 A Visible blood.
 13 Q Right. And you remember that his clothing had
 14 no blood; right?
 15 A That's correct.
 16 Q Okay. We sort of didn't finish talking
 17 about -- just backup a second. In, in March or so when
 18 the cabinets and the floor came back negative for blood,
 19 did you think that probable cause had dissipated?
 20 A I don't remember what they came back negative
 21 for, but I remember that they came back negative.
 22 I don't -- That did not change my opinion as to
 23 probable cause.
 24 Q Okay. All right. In E it says, Hupp said
 25 Russell was not very nice to Elizabeth, "Elizabeth"

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1 being Betsy, and Elizabeth said she was thinking of the
 2 leaving Russell. Do you see that?
 3 A Yes.
 4 Q Did you have any concern that Pamela Hupp was
 5 framing Russell Faria?
 6 A No.
 7 Q Why not?
 8 A Well, because it would have been a pretty bad
 9 frame job, is the best -- if she were framing, or if
 10 anybody were framing Russ Faria, I don't think they
 11 would make it look like a suicide. I don't think they
 12 would stab someone 55 times. I don't think they would
 13 clean up the floor, I don't think they would do it with
 14 the dog in the house. I don't think they would give a
 15 hoot if there was blood on someone else's slippers.
 16 They would just leave them there.
 17 I think the only person that cares about those
 18 things is your client, so it didn't concern me, or I never
 19 thought that someone was framing him.
 20 Q As you sit here now, do you think Russ Faria
 21 killed Betsy Faria?
 22 A My personal opinion?
 23 Q Yes.
 24 A Yes, I do.
 25 Q Does the fact that Pamela Hupp killed

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1 Gumpenberger affect that analysis at all?
 2 A No, it doesn't.
 3 Q In E it talks about the life insurance
 4 policies; right? The bottom of E.
 5 A Yeah.
 6 Q Okay. And do you agree that in all criminal
 7 investigations motive is relevant?
 8 A Sure.
 9 Q And was it your understanding at the time you
 10 filed the charge that Pamela Hupp had made herself the
 11 beneficiary of the life insurance policy?
 12 A No.
 13 Q You didn't know about that at that time?
 14 A It was my understanding that Betsy Faria had
 15 made Pam Hupp the beneficiary of one of her policies.
 16 Q Right. One of her policies; right?
 17 A Correct.
 18 Q Right. I should have been more specific.
 19 Thank you.
 20 MR. HEIGELE: Yes, you should have.
 21 Q (By Mr. Schock) But you did know that?
 22 A I did.
 23 Q And that created a motive for Pamela Hupp to
 24 kill Betsy Faria, do you agree with that?
 25 A I disagree with that.

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1 Q Why?

2 A Because -- Well, because she was going to die
3 soon anyway. And because, if that was her motive, I
4 would have expected someone who was savvy in the
5 insurance business to have at least waited long enough
6 to make sure that change was complete before they killed
7 her.

8 Q Okay. Now we go down to G.

9 A On the following page?

10 Q Yes.

11 A Yes.

12 Q And this talks about the illuminating
13 materials; right?14 It goes into the dog. Why don't you read G and
15 tell me when you're done.

16 A Okay.

17 Q Okay. So there's all this stuff about the
18 luminescence, and the theory of the going to the towel
19 drawer in there; right? Right? Blood?

20 A Correct.

21 Q But the blood came up negative three months
22 later; right? There was no blood?23 A The samples that were submitted tested, and
24 were tested, I'm not sure what they were tested for, but
25 the test came back negative.1 Q And you believe it was fair and reasonable to
2 rely on that probable cause statement from McCarrick,
3 but I mean, it's based on hearsay, but that's how it
4 works; right?5 A I rely on officers' testimony all the time
6 when I --7 Q Of course. And McCarrick, you didn't think
8 that McCarrick was the poly examiner, did you?

9 A I don't know that I knew.

10 Q You, I think you've told us that he was the
11 report writer. He wasn't the guy going out and
12 interviewing people and doing the polygraph?

13 A Right.

14 Q You knew he wasn't the polygraph guy; right?

15 A Based on the date, I would assume that he was
16 not the polygraph person.17 Q Right. So he relied on another person in law
18 enforcement's conclusion; right?

19 A Correct.

20 Q Do you think that it was fair that he was
21 ignoring other evidence, particularly, this first
22 responder evidence?23 A MR. HEIGELE: That's argumentative. It, it
24 assumes facts not in evidence. It misstates prior
25 testimony, and that's my objection.

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1 And I believe there was a presumptive -- I don't
2 remember exactly what they said.3 Q But I mean, once they came back negative,
4 didn't everything about G disappear?5 A MR. HEIGELE: Argumentative. Misstates her
6 past testimony, especially in regards to the diluents.

7 A It's diluent, by the way.

8 Q MR. HEIGELE: It's diluent. Sorry. That
9 she's already testified to.

10 A Does G go away?

11 Q (By Mr. Schock) Yeah. That's my question.

12 A No.

13 Q Why not?

14 A If I build a snowman in the morning and it's
15 gone when I get home, it doesn't mean the snowman never
16 existed.

17 Q That's your best answer?

18 A That's my answer.

19 Q MR. HEIGELE: That's my client.

20 Q (By Mr. Schock) That's fine. Now in H
21 there's a poly; right? Reference to the poly?

22 A Correct.

23 Q You said it showed extreme deception; right?

24 A Correct. That he, Russell Faria, showed
25 extreme deception.1 A I think that when Detective Sergeant McCarrick
2 submitted me a probable cause statement, it was
3 sufficient to issue charges.4 Q MR. SCHOCK: Okay. That's fine. I'm getting
5 near the end now.6 Q MR. BRUNTRAGER: Of the depo now, or of things
7 generally?8 Q MR. SCHOCK: We're just warming up on things
9 generally.

10 Q MR. SWANSON: Good times.

11 Q (By Mr. Schock) Do you remember that there
12 was a -- Go ahead.

13 Q MR. SWANSON: No, I was joking with her.

14 Q (By Mr. Schock) Okay. There's -- There was a
15 hearing before the first trial on the question of
16 whether the insurance policy beneficiary change would
17 come into evidence.

18 Q Do you remember that hearing?

19 A I do.

20 Q Okay. Did you take the position that it
21 should not come in? To evidence at the trial.

22 A That what should not come in?

23 Q The beneficiary change from -- of the policy,
24 the State Farm policy, from Russ to Pam Hupp?

25 A As I recall, the assistant attorney general

1 argued the state's position on that motion hearing, and
 2 the position of the state was that a change of
 3 beneficiary is hearsay, and that in the event the court
 4 wanted to allow that in, they needed to allow in the
 5 other evidence with regard to her life insurance
 6 policies.

7 And the other hearsay evidence, which would be
 8 statements from the deceased to other people regarding
 9 changing of her policies, that if they were going to argue
 10 that it's motive for Pam Hupp, then it had to also be
 11 motive for Russ Faria, and that if that hearsay document
 12 was allowed, the rest of the hearsay should be allowed.

13 That was the state's position, so I believe it
 14 was argued by assistant attorney general.

15 Q But you were responsible for the state's
 16 position; right?

17 A We were dually responsible.

18 Q Were you leading the prosecution, or was Mr.
 19 -- What was his name? Hicks, Richard Hicks?

20 A Hicks.

21 Q Was he leading the prosecution, or were you?

22 A I think it was a dual effort. I mean,
 23 obviously, the murder occurred in Lincoln County, but I
 24 requested, through the governor's office, the assistance
 25 of the attorney general.

1 Q And that's routine; right? I mean, a lot of
 2 prosecutors do that on a big case; right?

3 A I don't know if they do, or they don't. I
 4 just knew that I needed someone with more experience
 5 than I had --

6 Q Right.

7 A -- to assist in that case. And so the
 8 attorney general, the governor approved it and the
 9 attorney general's office sent down several individuals
 10 at different times to review it, and assign themselves
 11 to the case, and then ultimately, they were with me
 12 through every process throughout the case, including
 13 trial.

14 Q Okay. Did you ever tell Mr. Schwartz that if
 15 the judge rules that the beneficiary change was coming
 16 in, you would drop the case against Faria and not to go
 17 to trial?

18 A No.

19 Q Did you ever say to Joel Schwartz -- Well, did
 20 you make such a statement to anybody?

21 I asked you about Joel Schwartz. Did you make
 22 the statement, like I just said, to anybody?

23 MR. HEIGELE: Could you please restate the
 24 statement that you're attributing?

25 Q (By Mr. Schock) Sure. That if the judge

1 ruled the insurance beneficiary change to Pam Hupp would
 2 come into evidence, that you would drop the case; did
 3 you ever say that?

4 A No.

5 Q Did you ever say to anybody that dropping the
 6 case would present problems for you politically?

7 A No. I actually encouraged the family to drop
 8 the case and allow me to drop the case, and be
 9 supportive of that before the first trial.

10 Q So let's go into that a little bit. So you
 11 asked the family to drop the case?

12 A I told the family that I thought the case
 13 would be stronger down the road when more technology
 14 improved, and maybe there were more evidence gathered; I
 15 thought it would be a stronger case later.

16 I didn't think it was a case that was winnable.

17 Q So before the first trial you did not think
 18 the case was winnable?

19 A I thought that there -- that it would be
 20 difficult, it would be a difficult swing.

21 Q Who did you tell that to exactly?

22 A I don't remember.

23 Q The girls, Leah and Mariah?

24 A I don't remember if it was Betsy's mom, or her
 25 sisters, or maybe all of them. I don't remember.

1 Q And that's routine; right? I mean, a lot of
 2 prosecutors do that on a big case; right?

3 A I don't know if they do, or they don't. I
 4 just knew that I needed someone with more experience
 5 than I had --

6 Q Right.

7 A -- to assist in that case. And so the
 8 attorney general, the governor approved it and the
 9 attorney general's office sent down several individuals
 10 at different times to review it, and assign themselves
 11 to the case, and then ultimately, they were with me
 12 through every process throughout the case, including
 13 trial.

14 Q Okay. Did you ever tell Mr. Schwartz that if
 15 the judge rules that the beneficiary change was coming
 16 in, you would drop the case against Faria and not to go
 17 to trial?

18 A No.

19 Q Did you ever say to Joel Schwartz -- Well, did
 20 you make such a statement to anybody?

21 I asked you about Joel Schwartz. Did you make
 22 the statement, like I just said, to anybody?

23 MR. HEIGELE: Could you please restate the
 24 statement that you're attributing?

25 Q (By Mr. Schock) Sure. That if the judge

1 Q They all were convinced Russ had done it;
 2 right?

3 A Correct. We all were, yes. And I think they
 4 asked me a question like, do you think you can win it,
 5 do you think you're going to win it?

6 And I was honest with them.

7 Q Let's go into this issue of the trust fund for
 8 the insurance proceeds.

9 Do you remember that issue, first trial?

10 A Specifically, what are you talking about?

11 Q Let's go over the details. So Pam Hupp
 12 testified in the first trial; right?

13 A I believe so, yes.

14 Q And she testified that she had put the money
 15 from the insurance, from State Farm, it was \$150,000.00;
 16 right?

17 A I don't remember what she testified to,
 18 frankly, but I know that at some point she said that she
 19 put money into a trust.

20 Q Okay. Did you have any knowledge of officers
 21 suggesting to Miss Hupp that she make that -- that she
 22 put that money into a trust fund?

23 A No.

24 Q If you elicited testimony about whether it was
 25 in a trust fund, how did you know that that was a fact?

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1 A I believe Pam Hupp was Richard Hick's witness,
 2 so he would have had any meetings with her prior to
 3 trial.

4 Q You didn't know before the trial anything
 5 about the trust fund issue?

6 A I'm sure he and I discussed it, but he would
 7 have been the one meeting with her ahead of trial to
 8 talk about his questions, and, you know, how to answer
 9 questions, and where to go, and all those things.

10 Q Yeah. Did the second trial, do you believe
 11 that her credibility as a witness had been destroyed
 12 before the second trial, by her statements about him
 13 seeing Russ Faria hiding in his car, and all that?

14 A I don't know that I thought her credibility
 15 had been destroyed. I thought she had issues.

16 Q What issues did she have?

17 A A lot of them. She was just kind of all over
 18 the place.

19 Q Right.

20 A It was like she was hard to track.

21 Q I mean, she said in reference in -- she told
 22 law enforcement before the second trial that she had
 23 some kind of a memory recovery, and that she'd seen Russ
 24 Faria hiding in the Nissan at the location of the murder
 25 when she got there with Betsy a little after 7:00 on the

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1 27th of December; right?

2 A I remember that she said something about
 3 seeing a car in the area with two men in it, but I don't
 4 remember specifically who she said was in it.

5 Q And she'd never said anything about that
 6 before; right?

7 A That's correct. That's my understanding.

8 Q Did you consider that to damage her
 9 credibility?

10 A Not to the point of -- not, not being able to
 11 be rehabilitated.

12 Q You said she was sort of all over the place,
 13 if I remember your testimony correctly a moment ago?

14 A Correct.

15 Q Tell me what issues, on what issues she was
 16 all over the place.

17 A I don't remember specific issues. I just
 18 remember that she was the type of person that she would
 19 only answer the question that was asked. And so if you
 20 didn't follow up the question, or ask for more detail,
 21 she likely wouldn't give it to you.

22 So it didn't necessarily mean that she was
 23 inconsistent, she just answered questions in a way that
 24 was difficult for me, because you never really knew which
 25 direction it was going to go.

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1 Q Did you have help from the AG in the second
 2 trial?

3 A No.

4 Q You had access to some conversations between
 5 Mr. Faria and his counsel which were recorded by the
 6 jail; is that right?

7 A No, not the jail.

8 Q Did you have access to any conversations
 9 between Russ Faria and his defense counsel?

10 A At what period?

11 Q At any period, any recorded statements.

12 A We had access to any of the call logs that
 13 happened while he was in the department of corrections.

14 Q Right. And in fact, those calls were
 15 recorded; right?

16 A Sure. I mean, they specifically say that over
 17 and over.

18 Q Right. And you listened to those calls; is
 19 that right?

20 A Some of them I did.

21 Q Did you think that was improper, legally, when
 22 you were listening to the calls between a criminal
 23 defendant and his counsel?

24 A No.

25 Q Because?

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1 A Well, because there was -- It was said on the
 2 calls, this is a recorded line, these calls are
 3 recorded. There wasn't any request, it wasn't on an
 4 attorney line to have a private call, it was on the
 5 public line in the department of corrections that puts
 6 everyone on notice that if you think you have a
 7 privilege, you really don't, because these calls are
 8 being recorded.

9 Q Are you familiar with what's called the
 10 Third-Party Doctrine, which relates to a situation where
 11 the party has no other choice but to talk to their
 12 lawyer over a phone?

13 A I'm familiar with that.

14 Q Did you think that applied in this case?

15 A No.

16 Q Why not?

17 A Because the department of corrections has the
 18 ability for lawyers to call on a private line, and they
 19 chose not to.

20 Q Okay. Did you tell defense counsel,
 21 Mr. Swanson and Mr. Schwartz, that you were listening to
 22 their client's phone calls with him?

23 A I didn't listen to the calls until much later.

24 Q When you did listen to the calls, did you tell
 25 them that you were listening to the calls between

1 defendant and their counsel?

2 A We provided them with the calls.

3 Q Did you tell them that you had listened to
4 them?

5 MR. HEIGELE: Asked and answered.

6 MR. SCHOCK: No, she hasn't answered it.

7 A Did I call them up myself --

8 Q Yes.

9 A -- and say I've been listening to these calls?

10 Q Yes.

11 A No. But that's because I didn't listen to
12 them until right before the trial. My staff had been
13 listening, and I told them they needed to put them
14 together and send them out.

15 I didn't have time to listen to them. I started
16 listening to them just before the second trial.

17 Q Okay. When you see the probable cause
18 statement, did you look at the pictures of the
19 luminescence test yourself?

20 MR. HEIGELE: Objection. She did not issue
21 the probable cause statement. It's argumentative.

22 Q (By Mr. Schock) I'm sorry. When you issued
23 the charge against Russ Faria for murder, did you look
24 at the pictures that were made at the luminescence test?

25 A I didn't look at the pictures until before the

1 Q Okay. And you argued that you should not have
2 to state when the crime occurred; is that right?

3 A I argued that I shouldn't have to narrow the
4 time from between 7:20 and 9:41.

5 Q Why did you take that position?

6 A Because it would be impossible to know exactly
7 when it occurred.

8 Q Don't you think defense counsel needed to know
9 your theory of the case under the rules?

10 A Well, I think the judge didn't agree with
11 defense counsel on any of the times, whether it was in
12 the first trial, or the second, any of the times defense
13 counsel filed requests for a bill of particulars, the
14 judge denied the request. So regardless of what I
15 thought, the judge agreed.

16 Q Okay. In the insurance case, you were present
17 for the testimony of Corbin a few days ago, yes or no?
18 I can't remember.

19 A Oh, for the Argonaut case in this?

20 Q Yes.

21 A Yes, I was present.

22 Q There was a document presented as an Exhibit
23 A, I don't remember what exhibit it was, that is related
24 to the -- a case, and let me -- Let's go off the record
25 for one second.

1 second trial.

2 Q Do you remember whether any officers told you
3 at the end -- In the course of the Major Case Squad
4 call-out that they were convinced that, that Russ Faria
5 killed Betsy after he got home from game night?

6 MR. HEIGELE: To the extent it calls for
7 hearsay, I object. But you can answer.

8 A I don't remember that anyone during the
9 call-out specified when they thought he killed Betsy.

10 Q (By Mr. Schock) Okay.

11 A I know that they, the consensus was that they
12 believed he killed Betsy, but I don't remember them
13 specifically saying when they thought it had occurred.

14 Q When did you decide to argue to the jury in
15 the closing of the first trial that Russ Faria killed
16 Betsy earlier in the evening and the alibi witnesses
17 were lying?

18 A After Mr. Schwartz made his closing argument.

19 Q Do you remember a hearing on the alibi defense
20 and a bill of particulars?

21 So in other words, defense counsel gave an alibi
22 in response to discovery request, and then filed a bill of
23 particulars asking the state to state when the crime
24 occurred. Do you remember that hearing?

25 A I remember several of those hearings.

1 [Whereupon, there was a discussion off the
2 record].

3 Q (By Mr. Schock) We're going back on the
4 record.

5 Ma'am, let me ask you about your law license.
6 Has your law license ever been disciplined?

7 A Yes.

8 Q Tell me about that, please.

9 A I mean, by discipline, I've had bar
10 complaints.

11 Q I don't care about the complaints. I care
12 about the outcome of the complaints.

13 A Okay. Yes. I'm not sure what -- I think it
14 was called a private admonishment.

15 Q Okay. And when did that occur?

16 A I think in 2011.

17 Q Did that relate to this case in any way?

18 A No.

19 Q Okay. Have you ever had any discipline, not,
20 not complaints, but disciplines about this case?

21 A No.

22 Q Are there complaints against you pending at
23 this time regarding this case?

24 A Complaints?

25 Q Correct.

1 A Yes.

2 Q Okay. Will you do me the favor, that if those
3 are resolved before trial, you'll tell your attorney, so
4 we can either reopen the depo, or get -- sometimes it
5 might be something private that we wouldn't know about,
6 but I think I have a right to know it.

7 MR. HEIGELE: Joel Schwartz made it.

8 MR. SCHOCK: I know he did, but he might not
9 know the outcome.

10 MR. HEIGELE: Okay.

11 Q (By Mr. Schock) Do you agree to tell your
12 attorney if that is resolved before the trial of this
13 case?

14 A Yes. One of them has been resolved.

15 Q Okay. I'm only interested -- Did that result
16 in any discipline?

17 A No.

18 Q If any of them are, you will tell your
19 attorney?

20 A Correct.

21 Q Thank you. Let me ask you this: Have you had
22 any discussions with the U.S. Attorney, or any
23 representatives of the U.S. Attorney, or the FBI about
24 this case? Any aspect of it.

25 A Yes.

1 Q Tell me about those conversations, when they
2 happened, who they were with, and what was said?

3 A I spoke with the U.S. Attorney's Office in
4 January, I think it was January, of 2016, after he had
5 received a call from Joel Schwartz wanting to review the
6 file. And so I said, sure, come on out. And I gave him
7 my file.

8 Q Did you have any follow-up conversation?

9 A Yeah. I've talked to him whenever he's called
10 or needed more information, or needed my secretary to
11 send him something that maybe he didn't have initially,
12 or --

13 Q Who is "he"?

14 A Tom Dittmeier.

15 Q And do you know if his investigation is
16 complete?

17 A I do not know.

18 Q Do you know whether he's reached a conclusion
19 whether to charge anybody with murder in this case?

20 A I do not know.

21 Q You agree that, due to double jeopardy, Russ
22 Faria can no longer be prosecuted for the murder of
23 Betsy Faria?

24 A I agree that jeopardy has attached.

25 MR. SCHOCK: All right. That concludes the

1 first volume of the depo. It's all I have, unless you
2 all want to ask further questions, let's do that.

3 MR. RETTER: I don't have any further questions.

4 MR. PLEBAN: No questions.

5 MR. BRETT: No questions.

6 MR. BRUNTRAGER: I have no role, other than
7 personal counsel.

8 MR. SCHOCK: You could ask a question, though.

9 MR. BRUNTRAGER: Where is a good place for
10 lunch?

11 MR. HEIGELE: There's a couple down the way.
12 I'll reserve questions. Then we go off?

13 MR. SCHOCK: One second. When you say you
14 reserve questions, are you reserving questions because
15 they might be about what we're talking about next, or
16 because you don't want to ask her questions about what's
17 come before?

18 I think this is your shot on what we've talked
19 about up until now because we're going to do this other
20 part wholly separately.

21 MR. HEIGELE: I don't have any follow-up with
22 her.

23 MR. SCHOCK: Okay. As to what we've already
24 done?

25 MR. HEIGELE: Yeah. I'll reserve it for

1 trial.

2 MR. SCHOCK: Oh, okay. That's what you mean.
3 I didn't understand what you meant. Okay.

4 Okay. Let's go off the record. Concluding
5 volume one.

6 o-0-o

7 COMES NOW THE WITNESS, LEAH L. ASKEY, and having
8 read the foregoing transcript of the deposition taken on
9 the 23rd day of October, 2017, acknowledges by signature
10 hereto that it is a true and accurate transcript of the
11 testimony given on the date hereinabove mentioned.

12 LEAH L. ASKEY

13 Subscribed and sworn to before me this _____ day
14 of _____, 201____.

15 My commission expires: _____

16 Notary Public

1 CERTIFICATE

2 I, JANE M. RICH, a Certified Court Reporter,
3 within and for the State of Missouri, license #411, do
4 hereby certify that pursuant to notice there came before
5 me in the law offices of Barklage, Brett & Hamill, 211 N.
6 Third, St. Charles, Missouri,

7 LEAH L. ASKEY,

8 who was first duly sworn to testify to the truth and
9 nothing but the truth of all knowledge touching and
10 concerning the matters in controversy in this cause; that
11 the witness was thereupon examined, and said examination
12 was reduced to writing by me and signed by the witness,
13 and that this deposition is a true and accurate record of
14 the testimony given by the witness.

15 I further certify that I am not of counsel, nor
16 attorney for either of the parties to said suit, nor
17 related, nor interested in any of the parties or their
18 attorneys.

19 IN WITNESS WHEREOF, I have hereunto set my hand
20 this 2nd day of November, 2017.

21
22 Jane M. Rich, CCR No. 411.
23
24
25

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